

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-reg  
. Chapter 11  
.   
MOTORS LIQUIDATION COMPANY, . (Jointly administered)  
et al., f/k/a GENERAL .  
MOTORS CORP., et al, . One Bowling Green  
. New York, NY 10004  
Debtors. .  
. Monday, August 31, 2015  
. 9:48 a.m.  
. . . . .

TRANSCRIPT OF NOTICE OF HEARING/NOTICE OF STATUS CONFERENCE TO  
BE HELD IN CONNECTION WITH THE COURT'S CASE MANAGEMENT ORDER,  
DATED AUGUST 19, 2015 [Dkt. No. 13383], AND THE LETTERS FILED  
IN RESPONSE THERETO (RELATED DOCUMENT(S) 13383) [13396]

**BEFORE THE HONORABLE ROBERT E. GERBER**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

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1 (Proceedings commence at 9:48 a.m.)

2 THE COURT: I think I know all of you. There's no  
3 need for you to make appearances in advance, but when you come  
4 up to the mike, the main lectern to speak, please identify  
5 yourselves for the record.

6 I've read all of your letters and the attachments to  
7 the extent that I haven't read them previously. I have  
8 problems with both sides' positions, especially vis-a-vis  
9 proposals on timing, but also vis-a-vis matters of substance.  
10 It seems to me that neither side acknowledges -- and I'm  
11 pushing the GUC Trust and the indentured trustee off to the  
12 side for the time being. It seems to me that neither side  
13 acknowledges that it is subject to the jurisdiction and rulings  
14 of two separate judges and that anything Jesse Furman says  
15 counts, as far as I'm concerned, and I would have thought that  
16 anything that I say counts insofar as proceedings in the  
17 district court is concerned. And what I need from each of you  
18 is realistic proposals in terms of prioritization of matters so  
19 that I can get Jesse Furman the rulings he needs so that the  
20 bellwether trial or trials are not delayed.

21 It seems to me, subject to your rights to be heard,  
22 that by far the most important of the matters that we need to  
23 address are the matter of punitives. And I will also decide  
24 preliminarily, to the extent that it's necessary, the matter of  
25 imputation, but I thought I had already made my views on





1 imputation quite clear and that that was a matter that was  
2 something that I had already addressed in at least one, if not  
3 more than one, of the three opinions I've issued in 2015 on the  
4 subject.

5           Reading your various letters, it seems to me that one  
6 or both sides don't get it. I think the plaintiffs justifiably  
7 criticize New GM for wanting to re-litigate matters upon which  
8 I've already ruled. Conversely, I have problems with stuff  
9 from designated counsel, including from Mr. Weintraub, on  
10 things like an unwillingness to accept rulings that I've  
11 already made.

12           And I think that both sides are insufficiently  
13 nuanced in their analysis. There's some shtuss about my  
14 findings of fact. I didn't make findings of fact. You guys  
15 stipulated to facts, and I took all of the facts as undisputed.  
16 Your stipulations that you made are binding before me.  
17 Stipulations you made in my court are binding on me. It's  
18 Jesse Furman's right to decide whether he considers those  
19 stipulations binding upon him, but I made no findings of fact  
20 on my own. Based on undisputed facts, I guess some of the  
21 stuff that I decided can be regarded as a mixed question of  
22 fact and law, but it was principally a conclusion of law.

23           On matters that I decided, it is too late to reargue.  
24 It's too late by reason of the passage of time and it's too  
25 late by reason of the fact that jurisdiction over matters that





1 I decided has gone up to the court of appeals.

2           Conversely, I've read Jesse Furman's opinion going  
3 along with his order, and I think he was pretty clear in his  
4 reasoning, as well. And a lot of what I saw, especially from  
5 Mr. Weintraub, perhaps to a lesser extent from Mr. Weisfelner,  
6 seems to be looking to reargue that stuff, as well. And if  
7 there is to be reargument on anything where Jesse Furman  
8 expressed a view, that's got to be taken to him, either by a  
9 motion for reargument or, as was threatened by still another,  
10 motion to withdraw the reference. But until and unless Jesse  
11 Furman expresses any different views, I think we know where  
12 we're headed.

13           Now, it seems to me that we have three things that  
14 Jesse Furman identified as important to him, and then we have  
15 one or two more that I have to worry about as well. Seems to  
16 me that highest on the list is determining the issues,  
17 vis-a-vis punitive damages. It also seems to be raised in this  
18 -- I don't think I can pronounce it properly -- Bablisik  
19 (phonetic) case. You can tell me how it's pronounced, if  
20 that's not the way. We'll also need to determine the extent to  
21 which knowledge of New GM personnel is imputed to New GM. I  
22 thought I had expressed views on that and always had an  
23 understanding on that, which I fleshed out in the Peller  
24 reargument decision -- or Bledsoe, rather, reargument  
25 decision. But if there was something upon which I have not





1 ruled, as contrasted to wanting to reargue something which I  
2 have, then you can identify that for me.

3 And third is getting the bankruptcy work done that is  
4 necessary for the bellwether trial or trials beyond those two  
5 issues. And if there is such, I need you to identify that for  
6 me. I don't know whether that's just the markup of the second  
7 amended consolidated complaint or something else. Again, I  
8 need your help on it.

9 Now, I see Ms. Rubin there. Yes, you said in your  
10 letter, and I agree with you, that your issues are independent  
11 and they can be done first, but I also wonder whether they're  
12 the least urgent of what we need to get done over the next  
13 several months. So I want discussion as to whether, even  
14 though the GUC Trust stuff may be easier, whether we have the  
15 ability, if we need to, to push it back pending more urgent  
16 stuff, most significantly punitives.

17 I want a clarification as to what exactly we're  
18 talking about on bellwether trials -- well, trial or trials in  
19 the district court. At first, I thought the bellwether trial  
20 was going to be on economic loss claims, but now there's a hint  
21 that it could be on personal injury claims, and I need a  
22 clarification on that.

23 In a way, personal injury claims could be easier,  
24 from my perspective, especially if they're on post-sale  
25 accident cases, in which case the only thing I would need to





1 resolve is punitives. But I need your help on that issue.

2 I also wonder whether punitives is more nuanced than  
3 either side has argued in the papers that I've seen so far,  
4 which mainly are Mr. Steinberg's brief against a non-designated  
5 counsel, on the one hand, Mr. Weintraub's letter on the other.  
6 It may be -- and I'll expect you guys to brief it when we talk  
7 about briefing -- that the extent to which punitives are  
8 permitted on the one hand or prohibited on the other, once you  
9 get past assumptions of various claims of liabilities, could,  
10 by analogy or otherwise to the remainder of the April 15th  
11 decision, turn what is being relied upon as the predicate for  
12 the punitive damages.

13 So if, by way of example, the predicate is as in one  
14 complaint I read, stuff that took place prior to July 2009, one  
15 might come to one view, and if the predicate fit the punitives  
16 to something that took place after July 2009, the conclusion  
17 might be different. In any event, that's not a today issue,  
18 but that's why I think that punitives is the one that is  
19 probably going to need to go to the top of the list.

20 All right. Just one or two other things. One might  
21 think that a schedule that doesn't even have any oral argument  
22 until something after November 2nd is way too leisurely, and  
23 we're going to have to do much better in terms of disciplining  
24 ourselves to get the work done that Jesse Furman needs. What  
25 I'm going to need from each of you is a sensible triaging





1 approach to get the most important stuff done first under  
2 schedules that will appropriately utilize the fact that each  
3 side has mountains of resources, two, three, four law firms on  
4 each side, and that people are going to have to work through  
5 the fall, actually through the weeks before the fall, before  
6 September 21st. So I want to hear on that.

7           And then one last thing. I don't know how to say it  
8 delicately, but the notion of giving me 120 pages of briefs on  
9 marked-up complaints made me go ballistic. When I see the  
10 marked-up pleadings, I know what I need to do. Subject to your  
11 rights to be heard, I'll let each of you give me a letter of  
12 fives pages, no more than that, on commentary on your marked-up  
13 complaints if you want to. And the presumption is going to be  
14 simultaneous submissions on everything I get going forward with  
15 a brief time for simultaneous replies. And we don't have the  
16 luxury of going seriatim as we would if this were an ordinary  
17 breach of fiduciary duty case or busted fraudulent campaigns  
18 case. We've got to get work done so that work that needs to be  
19 done in district court isn't delayed.

20           All right. Who am I going to hear from first?

21           MR. WEINTRAUB: Your Honor, I've heard my name  
22 mentioned more than once, so --

23           THE COURT: Well, you're all going to get a chance to  
24 be heard before we're done. All right. I'll hear from you  
25 first, Mr. Weintraub.





1 MR. WEINTRAUB: I want to make sure that I do address  
2 everything that the Court asked me to address. I am here  
3 representing the plaintiffs represented by Mr. Hilliard in  
4 personal injury cases.

5 The first thing that I heard the Court ask is, is it  
6 correct that the bellwether trials concerned post-sale personal  
7 injury accident cases, and that is correct. There are six of  
8 them that are scheduled to begin on a rolling basis. The first  
9 one is in January of next year, and a letter that we submitted  
10 to the Court did identify the bellwether case.

11 THE COURT: You named them by name.

12 MR. WEINTRAUB: Yes.

13 THE COURT: And those are injury, death or both?

14 MR. WEINTRAUB: They -- I believe they are both.

15 THE COURT: Okay. And to what extent do they still  
16 have any economic loss components besides injury or death?

17 MR. WEINTRAUB: My understanding, Your Honor, is that  
18 none of them will have economic loss claims. Only two of them,  
19 based upon my reading and my consultation with counsel, contain  
20 what could be considered to be economic loss claims, and those  
21 are -- can be amended out.

22 THE COURT: Okay.

23 MR. WEINTRAUB: As Your Honor knows, the post-sale  
24 cases were not part of the motion to stay and they were not  
25 part of the briefing on the threshold issues. I agree with





1 Your Honor that the issue of punitive damages should be front  
2 and center, and we're prepared to deal with them on an  
3 expedited basis to accommodate this Court and the district  
4 court. I also agree with Your Honor that the punitive damages  
5 issues are more nuanced than are suggested in some of the  
6 pleadings filed by others in the case.

7           There are really three paths to punitive damages in  
8 this case. One is, as we contend, it's an assumed liability.  
9 If you look at the asset purchase agreement, we think it's  
10 clear that it's an assumed liability. As an assumed liability,  
11 everything having to do with Old General Motors is front and  
12 center and fair play.

13           Even if it is not an assumed liability, there are  
14 still two paths to punitive damages. One would be based upon  
15 what we were calling imputation is the fact that New GM  
16 inherited the books, the records, the reports, the databases,  
17 the files of Old GM, and then it inherited the employees and  
18 the knowledge and the memory and the brains of those employees.  
19 And to the extent that any of that inherited knowledge is an  
20 element of punitive damages, we think it's fair play.

21           The third path to punitive damages would be assuming,  
22 for purposes of argument, that there is no such thing as  
23 inherited knowledge and that the files were all destroyed as of  
24 right before the closing and the employees all were brainwashed  
25 right before the closing. Based upon what was accumulated





1 knowledge beginning from and after the closing and the failure  
2 to recall, the failure to warn, the information about repeated  
3 accidents within New GM without regard to old information and  
4 old knowledge would be a path to punitive damages. So there  
5 are three ways to get to punitive damages.

6 We think that you don't need to mark up the  
7 complaints to address that because either the parties [sic] are  
8 entitled -- the plaintiffs are entitled to punitive damages or  
9 they're not, based upon a yes/no answer. I think that through  
10 either motions in limine or restrictions on what can be  
11 permissibly proven at trial or based upon post-verdict motions,  
12 there could be a determination as to whether there can be  
13 punitive damages or not.

14 THE COURT: It was your reference to yes/no without  
15 being as nuanced as you were today, Mr. Weintraub, that had  
16 caused me to be as critical of what you said in your letter. I  
17 take it what you're saying is on the lack of need for more  
18 pleadings, that it is, in essence, a conceptual inquiry based  
19 on the valuation of the three things you articulated, after  
20 which I would then say yes/no based upon parsing those three  
21 considerations.

22 MR. WEINTRAUB: Yes, Your Honor. Either this court  
23 or -- we do believe that Judge Furman, through motions in  
24 limine, could make the same determination.

25 THE COURT: Well, that was the other thing that got





1 me so upset, Mr. Weintraub. It seems to me -- and this was  
2 something that became more relevant in the difference in views  
3 between Mr. Steinberg and Mr. Weisfelner -- it seems to me that  
4 my role in life is as kind of a gatekeeper on pleadings, to  
5 ascertain the extent to which certain kinds of claims are or  
6 are not permissible under the judgment and under bankruptcy  
7 law, after which Jesse Furman would decide whether whatever  
8 passes the gatekeeper is or is not actionable as a matter of  
9 non-bankruptcy law. Do you agree or disagree with that  
10 preliminary way or thinking of it?

11 MR. WEINTRAUB: Your Honor, the reason we took the  
12 position that we took was many-fold. First, we were not  
13 involved in the recent spate of motions to withdraw the  
14 reference. We were not part of that. Part of the reason we  
15 were not part of that is because we were dealing with wholesale  
16 accident cases, which we viewed as an assumed liability and  
17 therefore not directly within the purview of this Court.

18 It's pretty clear what's a pre-sale accident and  
19 what's a post-sale accident is driven by the date of the  
20 accident. Because there were post-sale accidents and because  
21 we viewed them as essentially assumed liabilities, we didn't  
22 see the close connection to this Court that the pre-sale cases  
23 have and the economic damages cases have. That said,  
24 obviously, we will abide by whatever this Court rules.

25 THE COURT: All right. Well, at least you didn't





1 say, with due respect.

2 MR. WEINTRAUB: I did not, Your Honor. I never say  
3 that.

4 In addition, you mentioned that my presentation here  
5 was more nuanced than it was in the letter. I viewed the  
6 letter as for purposes of scheduling. People are laying out  
7 dates and people are laying out briefing schedules and whether  
8 or not they wanted a hearing, and I didn't view that letter as  
9 a letter brief to the Court. And that's why we handled the  
10 substance rather more lightly than we would have had it been a  
11 substantive submission.

12 I don't know if, among all of those other questions  
13 at the beginning, there are any more for me.

14 THE COURT: Let me just get your bottom line then.  
15 You would agree that we should put punitives to the top of the  
16 queue, so to speak, and you would suggest that the briefing on  
17 the punitives focus, in particular, on the three things you  
18 mentioned, whether they were contractually assumed, whether --  
19 or the extent to which New GM employees' post-sale knowledge  
20 should be imputed to New GM and the extent to which they  
21 accumulated knowledge after the sale should be relevant to  
22 punitives.

23 MR. WEINTRAUB: Yes, Your Honor. And not to play  
24 hide the ball, and it's something we've been thinking about, we  
25 think there may be latent due process issues here, as well,





1 because of the timing of the purchase of the vehicles that were  
2 involved in the accidents. And not to get too deeply into the  
3 weeds, there is an argument that people who purchased their  
4 vehicles pre-sale but had the accident post-sale were known  
5 creditors entitled to constitutional sufficient notice and they  
6 didn't get that notice and they were prejudiced because but for  
7 that notice, they may not have had an accident at all because  
8 they might not have been driving the vehicle.

9           With respect to post-sale purchasers, we think that  
10 they would fall under the category of future claimants and  
11 there would be no amount of notice that could have been given  
12 to those claimants. They fell into the -- what I call the  
13 Grumman Olson category of future claim. And I think that those  
14 due process issues may have an impact on if the Court doesn't  
15 believe that this is an assumed liability, whether or not the  
16 successor liability shield would be appropriate for the pre-  
17 sale purchasers who are injured post sale and the post-sale  
18 purchasers that were injured post-sale.

19           THE COURT: I understood the legal references you  
20 were making, Mr. Weintraub, but not the factual predicate. If  
21 they were injured post-sale, I thought New GM was bellying up  
22 to the bar to assume potential liability for those either way.

23           MR. WEINTRAUB: That's correct, Your Honor. But  
24 remember that we're talking about punitive damages and three  
25 paths to punitive damages. The first path is we contend it's





1 an assumed liability. If we're not successful in convincing  
2 the Court that it's an assume liability, the question becomes  
3 whether or not there's another path to successor -- I'm sorry,  
4 to punitive damages.

5 THE COURT: You're focusing purely on punitives at  
6 this point.

7 MR. WEINTRAUB: Yes.

8 THE COURT: Okay.

9 MR. WEINTRAUB: There's no question on the  
10 compensatory.

11 THE COURT: Okay. All right. Anything else before I  
12 let other people be heard? I think at this point, then, I  
13 should probably hear from Mr. Weisfelner after you and then  
14 from Mr. Steinberg.

15 MR. WEINTRAUB: Unless you have any further questions  
16 from me, Your Honor.

17 THE COURT: No, thank you.

18 MR. WEINTRAUB: Thank you.

19 MR. WEISFELNER: Good morning, Judge.

20 THE COURT: Good morning.

21 MR. WEISFELNER: For the record, Edward Weisfelner,  
22 together with my partner, Howard Steel, from (indiscernible) as  
23 designated counsel for the economic loss plaintiffs. Also on  
24 the phone is Steve Berman, Elizabeth Cabraser, the co-leads for  
25 what we commonly refer to as the "economic loss plaintiffs."





1           Your Honor, let me begin by stating our view that the  
2 question of punitive damages is one that is time-sensitive with  
3 regard to the bellwether trials, and as Your Honor has heard,  
4 those are for personal injury/wrongful death cases as opposed  
5 to the cases that are our collective responsibility. So in  
6 terms of prioritizing for the Court and the parties, I think  
7 it's more critical that Your Honor deal with the interest of  
8 Mr. Weintraub and the interest of New GM and consider our  
9 issues on a secondary basis.

10           I say that because -- and again, I'm sensitive to  
11 Your Honor's concern that our arguments sort of lacked nuance,  
12 but it seemed to me that what Your Honor has determined,  
13 obviously subject to appeal, is that the sale order and related  
14 injunction are to remain in place but for independent claims.  
15 And the question, I guess, for all of us is what constitutes an  
16 independent claim. And, Your Honor, there are those that would  
17 argue that your decision had some language that could be  
18 construed in different ways depending on whether you were  
19 looking at it from the perspective of New GM or looking at it  
20 from the perspective of the plaintiffs. We took some comfort,  
21 frankly, in some of the things that Your Honor said in  
22 connection with the -- I guess it was the Bledsoe reargument,  
23 and in particular, footnote --

24           THE COURT: Where I fleshed out what I was thinking  
25 when I was talking about the knowledge of New GM personnel?





1 MR. WEISFELNER: In part, but it went beyond that.  
2 What we took, both from your original decision, the judgment,  
3 and ultimately the Bledsoe reargument was that you can state an  
4 independent claim, even if you make a reference to Old GM. You  
5 can state an independent claim even if it's based on an Old GM  
6 part or vehicle. What you can't do is take a successor  
7 liability claim and attempt to dress it up as an independent  
8 claim. In other words, the way we read it, New GM cannot be  
9 held liable for Old GM acts. Conversely, New GM can and should  
10 be held liable, subject to courts where complaints are pending,  
11 for their own independent, actionable conduct or failure to  
12 act, which, in our view, requires -- putting aside the whole  
13 issue of clearing the underbrush so that Judge Furman can get  
14 to his bellwether trials as originally anticipated, for us, it  
15 seems to us that the predominant issue is a determination once  
16 and for all from this Court as to whether or not either the  
17 second amended consolidated complaint or, for that matter, the  
18 State of Arizona's complaint or the State of California's  
19 complaint does or does not set forth independent claims.  
20 Because it seems to us that -- and then we could then go  
21 through the laundry list of the so-called, quote, "other  
22 matters" that GM has identified.

23 Once Your Honor makes the determination as to whether  
24 or not there is or is not independent claims, it seems to us  
25 the rest of the other matters sort of fall into place. So





1 that, for example, if we have not set forth independent claims,  
2 then, frankly, the question of punitive damages is moot. There  
3 are no damages. There's no claim. You're not going forward.  
4 You can't prove up compensatory damages, let alone, special or  
5 punitive damages, if you haven't set forth an independent  
6 claim.

7           Conversely, if you do have an independent claim,  
8 which by definition is a claim against New GM that is not a  
9 disguised successor liability claim, then your entitlement to  
10 damages has nothing to do with the bankruptcy proceeding or  
11 anything else that Your Honor has previously determined.  
12 Either you've got compensatory damages that a jury or a court  
13 is going to acknowledge as the predicate for punitive damages  
14 or you don't. But there's nothing about the bankruptcy that  
15 relates to whether or not an independent claim against New GM  
16 is entitled to punitive damages or not.

17           To us, it's a fairly simple and non-nuanced issue.  
18 Independent claims can proceed, subject to a court and a jury,  
19 on compensatory and, if appropriate, punitive damages so long  
20 as the punitive damage component or the compensatory damage  
21 component, for that matter, does not rely on conduct of Old GM  
22 or otherwise disguised as a successor liability issue.

23           Your Honor, in terms of triaging for our particular  
24 issues, we would think that, first and foremost, we get marked  
25 pleadings from GM where they tell us where in the second





1 amended consolidated complaint, or for that matter, in Arizona  
2 or California, the plaintiffs have somehow impermissibly  
3 crossed the line and are asserting something other than  
4 independent claims or attempting to disguise their complaints  
5 as successor liability complaints. Once we've done that -- and  
6 again, Your Honor, in terms of triage, we don't see it as that  
7 long of a process -- the second amended consolidated complaint  
8 was a matter of public record going back to June 12th.

9           There were allegations made by New GM with respect to  
10 the second amended consolidated complaint and impermissible  
11 crossing of the line into something other than independent  
12 claims a long time ago. One would think that it wouldn't be  
13 all that much of an effort requiring all that much time to mark  
14 those pleadings.

15           Now, Your Honor, again, we have a tendency to merge,  
16 in our own minds, the issue between marking up pleadings and  
17 then providing commentary on the marked-up pleadings and then  
18 briefing. And I agree with Your Honor that if someone shows  
19 you a set of marked-up pleadings and are able to give you a  
20 commentary with regard to those allegations that New GM  
21 believes crosses the line and renders them no longer  
22 independent claims but something else, then subject to our  
23 right to comment on those markups and tell you why they don't  
24 cross the line, I don't see that as being legal briefing. I  
25 see it as being a debate over whether or not specific





1 allegations or causes of action or background facts constitute  
2 an impermissible attempt to hold New GM liable on the successor  
3 liability theory as opposed to an attempt to hold GM liable for  
4 its own independent conduct or failure to act.

5           And in terms of triage, I would suspect that the  
6 right way to go is start with the marked-up pleadings and their  
7 annotations, which I view as being difficult to do in a  
8 simultaneous fashion as Your Honor's preliminary seemed to  
9 indicate because we don't know what portions of the complaint  
10 or complaints New GM contends with specificity --

11           THE COURT: Pause, please, Mr. Weisfelner, because I  
12 was bouncing back and forth. I was thinking of a simultaneous  
13 on punitives, but I understand why you would need to see the  
14 marked pleadings before you responded to them.

15           MR. WEISFELNER: Okay. And again, Your Honor, I  
16 don't want to interfere, as Mr. Weintraub correctly stated, the  
17 bellwether trials that are pending before Judge Furman are the  
18 bellwether trials that relate to personal injury or wrongful  
19 death, and my commentary doesn't relate to that. I agree that  
20 because those trials are coming up, the parties and Judge  
21 Furman need to know whether or not requests for punitive  
22 damages are violative of Your Honor's prior directives.

23           So I don't want to take away from the need to  
24 prioritize that issue, but for all of our issues -- and they  
25 include punitive damages but don't have the same timing concern





1 because we don't have bellwether trials that are scheduled -- I  
2 believe that the right way to proceed, and I'll explain in a  
3 little bit more detail, you go through the laundry list of  
4 other matters that GM identified. I think it's in Paragraph 6  
5 of their letter to you. I think you don't get into those  
6 issues, get into the legal briefing of those issues, unless and  
7 until you've had a determination by this Court that what we're  
8 talking about are independent claims or aren't independent  
9 claims.

10           And not to repeat myself, but to go quickly and then  
11 get into the next issue, on punitive damages, if it's not an  
12 independent claim, then by definition, you can't pursue  
13 punitive damages. You can't pursue any damages. Conversely,  
14 if it is an independent claim, there is nothing in Your Honor's  
15 decision or judgment, or for that matter, the original sale  
16 order injunction, that, in our view, could potentially prohibit  
17 someone on an independent claim from pursuing both compensatory  
18 and, if a court determines appropriate or a jury determines  
19 appropriate, ultimately punitive damages.

20           THE COURT: Is that another way of saying it's your  
21 side's position that if it is an independent claim, that pre-  
22 petition -- excuse me, pre-sale conduct by Old GM would be  
23 relevant to such a otherwise independent claim?

24           MR. WEISFELNER: Marginally. Again, I'm not a trial  
25 counsel nor can I possibly predict how that trial would ensue,





1 but it seems to me that the starting predicate is you need to  
2 convince this Court that what you've alleged and what you  
3 intend to prove is an independent claim as Your Honor has  
4 defined it. And if the plaintiffs are successful in convincing  
5 Your Honor that these are independent claims, frankly, I think  
6 the inquiry on the permissibility of punitive damages comes to  
7 a stop.

8 All Judge Furman would need to know whether or not  
9 punitive damages are an element of the claim is for Your  
10 Honor's gatekeeping role to be satisfied to say, Judge Furman,  
11 these are independent claims, having determined these are  
12 independent claims, it's now up to you whether or not they can  
13 ultimately prove the predicate compensatory damages against New  
14 GM and are entitled under non-bankruptcy law to punitive  
15 damages from New GM based on New GM conduct, not Old GM acts.

16 Now, Your Honor, again, I think many of us have  
17 struggled with the dividing line between New GM's failures or  
18 New GM's actionable conduct and Old GM since much of what the  
19 economic loss plaintiffs complain about have to do with what  
20 New GM did or didn't do with respect to Old GM vehicles or  
21 parts. As Your Honor laid out in Footnote 16 in the Bledsoe  
22 action, the mere fact that we're talking about an old part or  
23 an old vehicle doesn't get New GM off the hook with regard to  
24 its own independent obligations, whether by common law or by  
25 statute, be they state or federal.





1 But again, as a gating matter, we think that Your  
2 Honor's role, again at least as it relates to the economic loss  
3 claims, is to, first and foremost, determine has the second  
4 amended complaint, has the State of California and the State of  
5 Arizona asserted independent claims, yes or no. And if they  
6 have, then at least as to the punitive damages, we think the  
7 issue is resolved.

8 And if I can go through the rest of the list of what  
9 New GM has asserted are the other issues that the Court has to  
10 consider --

11 THE COURT: From Mr. Steinberg's August 26 letter?

12 MR. WEISFELNER: Yes. You've heard Mr. Weintraub  
13 deal with economic losses on the post-sale accidents and  
14 incidents, and I don't need to elaborate on that. It's not  
15 part of my bailiwick.

16 The proof of claim issue, this is a common cause of  
17 action, as I understand, the bulk in the Adams complaint and in  
18 the second amended consolidated complaint. In other words, the  
19 gravamen of the claim is that New GM's independent failure to  
20 provide a recall when it knew a recall was required and its  
21 other conduct amounting to fraudulent concealment was  
22 responsible for plaintiff's failure to file timely proofs of  
23 claim.

24 As a consequence, the complaints allege, in one way,  
25 shape, form or another, that in light of Your Honor's equitable





1 mootness finding, which, subject to appeal, basically tells all  
2 of us that we will not be able to go back and claw back, for  
3 lack of a better term, against the existing GUC Trust  
4 beneficiaries. So what the complaints say is, your failure to  
5 give us the information that was in your exclusive possession,  
6 causing us not to file proofs of claim, damaged us to the  
7 extent that we were not lined up with every other plaintiff as  
8 part of -- or every other claimant as part of the proof of  
9 claim universe, that we were denied the opportunity to  
10 participate from dollar one in the GUC Trust.

11           Now, that's a claim that Your Honor is, I guess,  
12 being asked to determine, and we think it's a failure  
13 straightforward question. Is that a claim against Old GM or is  
14 it a claim against New GM? We assert that it's a claim against  
15 New GM. We're saying that New GM's failure -- from the time it  
16 became New GM up through and including the bar date is the  
17 focus of our attention -- is a claim solely against New GM.  
18 The beginning and the end of the allegations is New GM knew on  
19 the date it came into existence that there was an ignition  
20 switch defect, what its potential was, that it needed to be  
21 recalled as a matter of federal law, that it failed to do so  
22 and it failed to do so purposefully, thus preventing the  
23 plaintiffs from filing proofs of claim. And a court can  
24 determine whether or not that's a cognizable claim, and if it  
25 is, what the element of damages ought to be.





1 THE COURT: Now, pause again. When you said the  
2 court in that last context, you were talking about Judge Furman  
3 after I have done my gatekeeping.

4 MR. WEISFELNER: Correct. Or in the case of the  
5 state claims, the relevant courts that those state claims are  
6 currently pending in.

7 THE COURT: And how would a state have standing to  
8 assert a claim of that character?

9 MR. WEISFELNER: Well, again, to the extent that --  
10 and I guess I've misspoke. To my knowledge, neither the State  
11 of California nor the State of Arizona had that allegation  
12 within their complaint. It's only a second amended  
13 consolidated complaint.

14 THE COURT: Okay. But you're talking about in your  
15 constituency, your vehicle owners, and their contention is that  
16 if the recall had taken place in the gap period between the  
17 sale and the bar date, your guys could have filed claims and  
18 then they would have gotten the 25 or 30 cents, whatever  
19 unsecureds got in the case.

20 MR. WEISFELNER: Precisely. That's exactly right.

21 THE COURT: All right.

22 MR. WEISFELNER: And again, Your Honor, to the extent  
23 that New GM contends that somehow that claim isn't an  
24 independent claim, is instead a disguised successor liability  
25 claim, to the extent Your Honor needs briefing on that topic, I





1 guess we'll brief it. We'll comply with whatever Your Honor's  
2 desires are in that regard. But it seems to me, again, a  
3 gating issue is what part of the second amended consolidated  
4 complaint, including this particular cause of action, do you  
5 believe fails to satisfy independent claim status and why.

6           Next issue in Mr. Steinberg's letter was the  
7 contention that state law consumer protection statutes related  
8 to Old GM vehicles and parts are somehow improper. And Your  
9 Honor, it's our contention that, again, as a gatekeeper, if you  
10 determine that the claims, based on state law consumer  
11 protection statutes or otherwise, relate to New GM and what New  
12 GM did or failed to do as opposed to what Old GM did or failed  
13 to do, that depending on the particular state consumer  
14 protection statutes, they either give rise to a claim or cause  
15 of action to be determined by the trial court or they don't.  
16 And the role of the gatekeeper, Your Honor, is to determine  
17 whether or not those particular allegations relying on state  
18 consumer protection laws do or do not constitute independent  
19 claims versus disguised successor liability claims.

20           Likewise, the next issue, failure to warn and duty to  
21 recall an Old GM vehicle. It is New GM's position, which we  
22 believe is a blatant attempt to re-litigate what Your Honor has  
23 already decided, but it's New GM's apparent position now that  
24 an allegation against New GM sounding in the nature of a  
25 failure to warn or a breached duty to recall, if it involves an





1 Old GM vehicle, it's somehow prohibited. And, Your Honor, we  
2 believe that New GM had an independent duty to warn and an  
3 independent duty to recall, which it violated and did so in a  
4 reprehensible fashion, giving rise to liability constituting an  
5 independent claim against New GM. And if we need Your Honor as  
6 the gatekeeper to once again tell us that's true,  
7 notwithstanding what you said in April and then in June and  
8 then at Bledsoe, so be it. We'll ask Your Honor to say it  
9 again. An independent act or failure by New GM is actionable.

10 The next issue on the list is can you state a claim  
11 based on Old GM conduct. I guess that's a lot more nuanced.  
12 We don't believe that the definition of independent claim  
13 permits one to seek relief predicated solely on Old GM conduct.  
14 That would seem to us to be on the wrong side of the definition  
15 of independent claim and instead constitute a disguised  
16 successor liability action. But we firmly believe that the  
17 second amended consolidated complaint is based on New GM  
18 conduct, New GM independent failures and independent conduct.

19 The issue of knowledge imputation is next on the  
20 list, and I, Your Honor, think I agreed with Your Honor's  
21 tentatives that Your Honor has already spoken on that issue.  
22 And I'm not sure I fully understand the question as it's been  
23 posed by New GM, whether or not the knowledge gained by New GM  
24 on the day it was born, or by its employees rather, can be  
25 imputed to the corporate entity. Again, we would have thought





1 that not much more, if anything, needed to be said by this  
2 Court on that issue, but if somehow New GM believes outside of  
3 the context of reargument or outside of the context of issues  
4 that are up on appeal, that it has something specific and new  
5 to say with regard to knowledge imputation, we're willing to  
6 hear it and, if necessary, brief it. I think what Your Honor  
7 said with regard to findings of fact, because New GM alleged  
8 that we were misusing the Court's findings, are not to be  
9 applicable, and Your Honor, I did say that, that nothing in  
10 your decision was to be applicable in any other court,  
11 including the MDL.

12 But, Your Honor, I think we all know the difference  
13 between stipulations, the effect of stare decisis versus res  
14 judicata, and I think it's easy for a court trying a specific  
15 complaint to determine the extent to which the stipulations  
16 will be binding on the parties or the extent to which it will  
17 have to engage in its own independent fact finding as to  
18 knowledge and imputation. So again, in terms of triage, we're  
19 hard pressed to understand why that's an issue that, as a  
20 gatekeeper, Your Honor necessarily needs to be involved in.

21 I'm coming down to the last two issues before I get  
22 to some more general issues that GM raised. GM continues to  
23 make the argument that the second amended consolidated  
24 complaint contains allegations on behalf of plaintiffs that  
25 were plaintiffs in the amended complaints. And somehow, they





1 argue that having been plaintiffs in the --

2 THE COURT: You used the word "amended complaint."

3 Do you mean pre-petition accidents or pre-petition purchasers  
4 who are claiming -- I keep saying "prepetition," I mean pre-  
5 sale, who are complaining of alleged post-sale injury?

6 MR. WEISFELNER: The latter, Your Honor. It's GM's  
7 contention that if we have named the same plaintiffs in the  
8 second amended consolidated complaint as were named plaintiffs  
9 in the now amended economic loss category of pre-sale  
10 plaintiffs that somehow they ought to automatically be  
11 dismissed. And again, we don't know where that contention  
12 comes from.

13 Again, we get back to the basic either the  
14 plaintiffs, each and every one of them or any of them have or  
15 have not succeeded in pleading independent claims, in which  
16 case they can go forward, or they failed to plead independent  
17 claims in any way, shape or form, in which case they're not  
18 going forward. And to the extent that Your Honor's prior  
19 decisions weren't, to GM's satisfaction, clear enough, then  
20 you're being asked, I guess, to look at the specific  
21 allegation, the specific complaint, and determine whether or  
22 not we've crossed the line into a disguised successor liability  
23 action or whether or not we've complied with Your Honor's prior  
24 determination and have, instead, set forth actionable  
25 independent claims.





1           Last and finally before I get to some of the larger  
2 issues, when New GM lists other matters it now wants the Court  
3 to consider and, in our view, reconsider, they want you to  
4 determine that any allegations relating to brand diminution  
5 based on New GM actions -- they're saying anything that you've  
6 complained about that sounded in the nature of brand diminution  
7 have to be a disguised successor liability claim.

8           And again, we think when Your Honor goes through the  
9 complaint, the second amended consolidated complaint, with the  
10 benefit of New GM's markups and annotations and with the  
11 benefit of our responses to their markup and annotations, you  
12 will be able to determine quite readily that our complaint  
13 regarding brand diminution is a complaint based on New GM's  
14 actions and New GM's failures to act. And our allegations  
15 regarding brand diminution do not rely on, are not predicated  
16 on, Old GM conduct.

17           Now, Your Honor, there are other -- or at least two  
18 other overriding concerns, and they relate in no small measure  
19 to non-ignition switch defect plaintiffs. I'll take them one  
20 at a time.

21           Your Honor made its ruling -- made his ruling  
22 regarding equitable mootness, and that decision is up on appeal  
23 before the Second Circuit, and as Your Honor knows, Judge  
24 Furman has directed the parties to seek an expedited appeal.  
25 Your Honor's determination with regard to equitable mootness





1 was, by definition, applicable to folks other than the  
2 non-ignition switch plaintiffs. Nevertheless, it seems to us  
3 that the GUC Trust is probably correct that the rationale  
4 underlying Your Honor's equitable mootness decision would apply  
5 with equal force to the non-ignition switch plaintiffs. And in  
6 fact, your procedures under the judgment, the 17-day business  
7 about filing procedure, would have given the non-ignition  
8 switch plaintiffs all of the due process that could reasonably  
9 be afforded them on the issue of applicability of Your Honor's  
10 equitable mootness ruling as to them.

11 THE COURT: Pause, please. I don't remember whether  
12 it was in this context -- I think it was -- but I talked about  
13 it's not res judicata, but it's stare decisis, and this would  
14 convert it from being stare decisis to res judicata if, after  
15 an opportunity to be heard, I came to the same view.

16 MR. WEISFELNER: I think that's right. And, Your  
17 Honor, it seems to me that the only thing that needs to be  
18 preserved -- and I think it's already preserved, but just to  
19 draw upon line under it -- in this court and in any other court  
20 is it is our position that with regard to ignition switch  
21 plaintiffs and non-ignition switch plaintiffs, the problem we  
22 had with Your Honor's equitable mootness decision is the  
23 failure to take into account the remedy that could be crafted  
24 or created that would, on the one hand, provide a remedy to the  
25 plaintiffs, and on the other hand, wouldn't provide a detriment





1 or an impermissible detriment to the GUC Trust beneficiaries.  
2 And I'm referring to two things. One is the accordion feature.  
3 And by the accordion feature, I mean that part of the plan  
4 going back to '09 that provided that if claims against the GUC  
5 Trust were to exceed a certain threshold -- I think it's \$35  
6 billion -- then and in that event, New GM would be required to  
7 contribute I think by now, it's 30 million shares of New GM  
8 stock.

9 I think it's crystal clear from the review of the GUC  
10 Trust disclosures that there is no reasonable chance, there's  
11 no chance, that the claims against the GUC Trust, as currently  
12 constituted, can possibly reach the \$35 billion threshold. And  
13 as a consequence, there is no opportunity to trigger the  
14 accordion feature.

15 In our view, where the claims of the parties whose  
16 due process rights were violated with regard to the bar date,  
17 to be allowed to assert late claims, Your Honor's already  
18 determined you can't claw back old value, but what we don't  
19 think Your Honor determined or what Your Honor failed to take  
20 into consideration was the availability of the accordion  
21 feature. And if our claims count toward the threshold, we  
22 believe we'll exceed 35 billion and may very well get to the  
23 maximum amount of claims that would trigger the maximum number  
24 of New GM shares. And in that regard, we believe that the  
25 equitable mootness decision ought not apply to the accordion.





1 That's a subject for the appeal, we understand, but converting  
2 stare decisis into res judicata, again, I don't think we're  
3 going to contest any of that so long as everyone's rights with  
4 regard to the accordion are preserved.

5           Likewise, as Your Honor knows, we have a hearing,  
6 unless you've prevailed upon the GUC Trust beneficiaries to  
7 change the date of September 22nd, wherein the parties were  
8 going to present to Your Honor reasons for why the remaining  
9 cash in the GUC Trust coffers, if you will, some seven or \$800  
10 million, should or should not be distributed to the  
11 beneficiaries before the appeal is resolved.

12           In the plaintiff's point of view, there is a huge  
13 difference between going back to the beneficiaries, the GUC  
14 Trust unit holders, and saying, you got your money and you got  
15 it a long time ago and you've done whatever it is that you've  
16 done with that money and you've engaged in whatever  
17 transactions you've engaged in, too bad, you got 30 cents on  
18 the dollar, you should have only gotten 15 cents on the dollar  
19 if you included our claims, kick back half of what you've  
20 already received. We think there's a big different between  
21 doing that, which was the -- we believe, the subject of your  
22 equitable mootness decision, as opposed to saying, you know,  
23 there's another seven or \$800 million that's yet to be  
24 distributed.

25           We don't want you distributing it unless and until we





1 work out a formula that says, we're going to make up for the  
2 fact that the amount that you've already distributed didn't  
3 include us, and now we're going to get a priority on this next  
4 700 million in an effort to get us caught up.

5           And we think so long as that contention is reserved,  
6 both for the ignition switch plaintiffs that were part of the  
7 threshold issues and the non-ignition switch plaintiffs that  
8 weren't part of the threshold issues, then we agree with the  
9 GUC Trust beneficiaries that there is no need to embroil them  
10 in the rest of the issues and that their concerns are separate.  
11 And whether we go forward with the trial currently scheduled  
12 for the 22nd or not, Your Honor, we're ready -- will be ready  
13 to proceed in that regard.

14           Last issue, and then I will turn the mic over subject  
15 to whatever questions Your Honor may have, and that relates  
16 again to the non-ignition switch plaintiffs. And it focuses  
17 back, Your Honor, on your determination that independent claims  
18 can and should proceed against New GM notwithstanding the '09  
19 sale order and injunction.

20           Our position is that the rationale that Your Honor  
21 employed in determining that independent claims can proceed is  
22 a rationale that ought to be applicable to non-ignition switch  
23 plaintiffs as well, because it calls into question the  
24 following proposition. May a buyer in a 363 sale -- putting  
25 aside good faith or bad faith in connection with the sale





1 itself because we believe that New GM, in fact, engaged in bad  
2 faith. It's one of the issues we will pursue on appeal. It's  
3 one of the reasons why we think the bar against successor  
4 liability ought not be enforced.

5 But putting aside good faith or bad faith, the  
6 question is if you have a purchaser in a 363 sale, may the  
7 bankruptcy court that approves that sale and gives the buyer  
8 free and clear protections, including successor liability,  
9 nevertheless afford the buyer prospective protection for its  
10 own independent tortious conduct? And we think that the clear  
11 answer to that proposition is no.

12 So again, if a non-ignition switch defect claimant,  
13 whether would start an independent claim against New GM, would  
14 that non-ignition switch plaintiff be successful, vis-a-vis  
15 Your Honor as a gatekeeper. New GM's contention is that, aha,  
16 wait a second, the non-ignition switch plaintiff cannot assert  
17 an independent claim against New GM unless and until that  
18 non-ignition switch plaintiff demonstrates that back in '09,  
19 its due process rights were violated. Because Your Honor only  
20 determined that independent claims were permissible having  
21 first determined that the ignition switch plaintiffs' due  
22 process rights were violated with prejudice because they didn't  
23 have an opportunity to argue over breadth of the injunction.

24 So that's the last issue I can think of where we have  
25 a marked disagreement between Mr. Steinberg and I. It's my





1 belief that Your Honor's determination that the law in the  
2 Second Circuit, that the law across this country is uniform,  
3 and that is that a buyer in a 363 sale, putting aside whether  
4 or not it's acting in good faith, does not obtain a  
5 get-out-of-jail-free card for its own post-sale tortious  
6 conduct, bad actions, fraudulent concealment.

7 THE COURT: I understand the issue. Pause. If you  
8 said this before in baby talk, I don't remember it. Are you  
9 now going to be kind of a designated counsel for non-ignition  
10 switch plaintiffs, as well --

11 MR. WEISFELNER: Your Honor --

12 THE COURT: -- or did they have separate counsel?

13 MR. WEISFELNER: They do not have separate counsel,  
14 and to the extent that their rights need to be preserved, since  
15 co-lead counsel in the MDL does have actions pending on their  
16 behalf, subject, of course, to subsequent certification of  
17 classes and that sort of thing, yes, we perceive ourselves as  
18 having taken on the mantle of preserving and protecting the  
19 rights of non-ignition switch plaintiffs in this court.

20 THE COURT: So I don't have to worry about them not  
21 having been heard if I listen to you.

22 MR. WEISFELNER: I think that's a correct conclusion,  
23 especially in light of Your Honor's procedures in the judgment  
24 itself.

25 THE COURT: Okay. Continue or were you done now?





1 MR. WEISFELNER: Your Honor, subject to whatever  
2 questions or concerns you have, I'd be done. I just want to  
3 make sure that neither of my overseers, Mr. Berman or Ms.  
4 Cabraser, have any further comments that they'd like to make.

5 THE COURT: Is Mr. Berman on the phone?

6 MR. WEISFELNER: I believe so.

7 MR. BERMAN: (Telephonically) Yes, Your Honor. I'm  
8 on the phone. I think that he did a great job covering our  
9 interests here.

10 THE COURT: I'm sorry, you're not very audible. Can  
11 you say it slower and louder, please?

12 MR. BERMAN: I think that he's covered everything  
13 well and I have nothing to add.

14 THE COURT: Okay. Mr. Stein --

15 MS. CABRASER: (Telephonically) Your Honor,  
16 Elizabeth Cabraser.

17 THE COURT: Wait, I'm sorry. Before you come up,  
18 Mr. Steinberg, I thought I heard something on the phone after  
19 Mr. Berman said he had nothing to add.

20 MS. CABRASER: Your Honor, Elizabeth Cabraser,  
21 co-lead for the economic loss plaintiffs. You heard me. I  
22 apologize for not speaking more slowly. I'm simply concurring,  
23 as is Mr. Berman, subject to Your Honor's (indiscernible). I  
24 have nothing to add at this point.

25 THE COURT: Okay. I asked my questions as we went





1 along.

2 Mr. Steinberg.

3 MR. STEINBERG: Your Honor, on behalf of New General  
4 Motors, we have no problem with triaging the cases -- the  
5 issues that arise in connection with the bellwether cases. And  
6 I think Your Honor and Judge Furman, on Friday, at the MDL  
7 hearing, put his finger on the three issues that he needed most  
8 to deal with. One of them is the punitive damage issue. The  
9 second is what we've been calling here the imputation issue.  
10 And the third is not necessarily marking up a complaint for  
11 purposes of something that is ready to go to a trial, but are  
12 the causes of action pled in those complaint that are otherwise  
13 proscribed by Your Honor's 2009 sale order and your April  
14 decision and your judgment. And we think we can address all of  
15 those things and have those pleadings done in the month of  
16 September.

17 We had set forth in our letter an accelerated  
18 briefing schedule on the punitive damage issue. And to some  
19 extent, based on Your Honor's comments today, I think we need  
20 to deal, as the professionals, to try to figure out how to  
21 address issues like number of pages to brief, how to present  
22 something to give Your Honor something better than what we gave  
23 to you last Wednesday. But vis-a-vis, the punitive damage  
24 brief, in the context of the Bavlsik pleading, which we filed  
25 on Friday, we essentially wrote the punitive damage brief that





1 we would have as our opening brief, tailored to the Bavlsik  
2 case, but the generic issue as to whether the punitive damage  
3 issue was an assumed liability for post-sale accidents for  
4 pre-sale cars, and we think we've already briefed. So we could  
5 be on an accelerated basis.

6 THE COURT: The assumed liability is potentially  
7 capable of being dealt with in a way similar to the one you  
8 did, but isn't that complaint that you were commenting on the  
9 easier end of the spectrum because so much of the alleged bad  
10 things that New GM did -- excuse me, that were done by the GM  
11 without either an Old or New before it, were at least  
12 seemingly, if not plainly, pre-sale actions?

13 MR. STEINBERG: Yes, Your Honor, but I think it's  
14 actually the same with regard to all the bellwether cases. The  
15 Shoyer (phonetic) complaint is over 112 pages. I think  
16 probably 75 pages are cribbed from the second amended complaint  
17 dealing with Old GM conduct. And I think a large part of what  
18 you heard today was preliminary oral argument on the issues  
19 that we're supposed to brief substantively, and while I'm  
20 perfectly capable and willing if Your Honor is prepared to  
21 entertain, I took today's hearing to be more procedural.

22 But I will point out that punitive damages versus  
23 compensatory damages are two different things, and punitive  
24 damages are directed for things unrelated necessarily to the  
25 specific accident at issue, but more broadly to punish the





1 wrongdoer for bad conduct. You could have a circumstance where  
2 Your Honor has determined punitive damages, as a general  
3 matter, was not an assumed liability, but to the extent that  
4 you're still seeking it based on Old GM conduct, that that was  
5 proscribed by the sale order.

6 And so we believe that we can do the marked  
7 pleadings. There's only six of them, and while one of them is  
8 over 100 pages, they're not all 100 pages. What would actually  
9 be helpful for us to deal with this is that they've already  
10 admitted that they've pleaded beyond the sale order. They've  
11 already included, as part of those bellwether complaints, in  
12 effect, economic loss claims that are otherwise barred by the  
13 sale order. And they've said in one of the footnotes to Your  
14 Honor's letter that in at least two of the cases that they're  
15 going to amend the complaint.

16 Well, they should have amended the complaint before  
17 to not do what was proscribed by the sale order, but in order  
18 to save time and to save Your Honor reviewing something, they  
19 should get rid of the underbrush of what they're prepared to  
20 concede right now is proscribed by the sale order, and then we  
21 can comment on the amended complaint, and they should be able  
22 to do that forthwith.

23 We will say that even though they've made the  
24 concession for two of the complaints, that all six of the  
25 complaints are violative of Your Honor's sale order. And





1 things like fraud in connection with the sale of a vehicle,  
2 fraudulent concealment in connection with the sale of a  
3 vehicle, consumer protection statutes under Oklahoma law,  
4 Nevada law, all of which are barred by the sale order and they  
5 should never have been included in the first place. And what  
6 you have here is, I think, a side that is sort of tone deaf of  
7 what Your Honor rules. Your Honor rules that something  
8 shouldn't happen, they just do it anyway, and then they hope on  
9 the second time, they get a better shot at doing it.

10           So vis-a-vis the bellwether complaints, they amend  
11 whatever they think they know they did wrong. We'll take it on  
12 face value and we'll go from there. We already have  
13 essentially briefed the opening brief, and we could do whatever  
14 we need to do on punitive damages on the reply brief.

15           I do agree to some extent with what Mr. Weisfelner  
16 said, that is to the extent that it is a retained liability,  
17 that punitive damages is not going to be relevant because  
18 they're not going to be able to assert it. But beyond that, it  
19 is more nuanced than on this issue, and I think the nuance will  
20 be reflected by the marking up of the pleading, so that on  
21 these bellwether cases, we'll be able to show that what they're  
22 seeking for, for purposes of punitive damages unrelated to the  
23 accident, designed to punish the wrongdoer, is based on Old GM  
24 conduct and therefore should be eliminated from the pleading.

25           THE COURT: Pause, please, Mr. Steinberg. Sooner or





1 later, one of your hundreds of opponents is going to have a  
2 claim, more likely an economic loss claim, I suspect, but  
3 either way, where the bad things that are charged are going to  
4 be things that New GM allegedly did bad after the sale, unlike  
5 that one that you gave me in your recent notice of presentment.  
6 Have you briefed that potential possibility to your  
7 satisfaction or do you need to supplement your earlier brief to  
8 do that?

9 MR. STEINBERG: I think, Your Honor, we're talking  
10 about economic loss complaints. I do think, Your Honor, that  
11 the issue that they have as their linchpin is the imputation  
12 doctrine, and what we've said in our briefing, which, Your  
13 Honor, I don't believe has ruled on at all, is that the devil  
14 is in the detail on these imputation issues. There's not an  
15 automatic imputation, and you have to look at the underlying  
16 cause of action that is actually being pled to see whether it's  
17 really -- not a disguised successor liability -- it could very  
18 well be a disguised successor liability, but really whether  
19 it's a retained liability unrelated to any independent conduct,  
20 and this is all dressed up to be something else. And you need  
21 to be able to see when they want to impute the knowledges,  
22 whose knowledge for what purposes to establish what claim that  
23 they assert as an independent claim. And that, they've never  
24 done. They just paint this with a broad brush of general  
25 phraseology.





1           And Your Honor, in your Bledsoe decision, you picked  
2 out two examples that you said would clearly be something that  
3 may be imputation. I actually don't think we disagree with  
4 either of the two examples that you had in your Footnote 16.  
5 One of them related to if we knowingly installed a part  
6 post-sale that we knew that was defective. I think that that  
7 probably is not something that we would bring before Your Honor  
8 if that was the case.

9           And likewise, with refusing to repair something that  
10 we knew that was -- that should have been repaired, which is, a  
11 sense, a glove box warranty issue that we have in Castillo  
12 where someone came in, should have been repaired, wasn't  
13 repaired, and now they're looking for the repair remedy.  
14 They're not looking for repair remedies, which is the glove box  
15 warranty. They're looking for economic loss and economic  
16 damage. That's something that's totally different.

17           So on the imputation doctrine, for example, when they  
18 talk about a failure to recall, failure to warn, in the Burton  
19 case, the judge -- Judge Bernstein decided on failure to warn.  
20 He said that cause of action doesn't exist for economic loss  
21 plaintiffs at all, and therefore he knocked it out in the  
22 context of that case. One of the things that we will be  
23 briefing on the imputation as it relates to the economic loss  
24 plaintiffs is that cause of action doesn't exist.

25           So when you are asserting it against us, you don't





1 get the ability to assert a retained liability against us,  
2 claim as an independent claim and ask another court to  
3 determine maybe you're right. If it was a retained liability,  
4 never should have been asserted against us in the first place.  
5 That was the purpose of the injunction.

6           So we can brief the imputation doctrine quickly. To  
7 some extent, Your Honor, you've seen the imputation briefing  
8 already because -- I want to know why no one's mentioned it --  
9 there was fully briefed the no strike pleading with regard to  
10 the second amended complaint. There was that in the context of  
11 that briefing. There was sections on the imputation doctrine  
12 as to whether it should apply or not apply.

13           In the most recent thing that we filed on Friday on  
14 the post-sale accident for Old GM vehicle, there's briefing on  
15 the imputation doctrine, as well, too. And we cite maybe ten  
16 cases that say there's not an automatic imputation, and we also  
17 cite to Your Honor's opinion where you say you don't do it on a  
18 whole-cloth basis.

19           The real problem is, is they've never articulated  
20 what it is that stands up as an independent claim.  
21 Mr. Weisfelner will talk about that New GM had a duty to recall  
22 on the day that it came into existence, which meant that Old GM  
23 had that duty to recall under his theory on the day before the  
24 sale. And Old GM was in charge of a bar order and the issue of  
25 getting a bar order and getting the notice approved. That was





1 not a New GM issue, and we'd claim that all of that is not  
2 something that we assumed as part of the sale process, that  
3 with regard to Old GM vehicles, the claims process that would  
4 take place after the sale, that was something that we didn't  
5 have a duty or responsibility for and no ongoing obligation at  
6 all. That, we believe, was a retained liability, and that is  
7 what we brief to you in connection with the economic loss  
8 no-strike pleading and that is what we will brief to you on  
9 September 3 in connection with the Adams lawsuit.

10           What I struggled with in writing the letter on August  
11 26th is how to deal with a circumstance where I, in a sense,  
12 briefed a lot of these issues to you already. They've briefed  
13 a lot of these issues already to you. And when Your Honor  
14 says, you don't need to give me another 50 pages, we could do  
15 it much shorter by referencing that this subject is found in  
16 the following pages in connection with pleadings already filed  
17 and, for Your Honor's convenience, put it in an appendix so you  
18 don't have to struggle and look for it, but you have a context  
19 of the briefing. And anybody who wants to supplement beyond  
20 with a greater thought process that they had when they briefed  
21 these things can do it in a relatively short basis. And so we  
22 don't have to do 50 pages.

23           But as Your Honor could see, when we did these  
24 letters -- and as we said, we had two meet-and-confers and  
25 there were particular agendas as to why one side wanted to put





1 it one way and one side put in the other way. And so while we  
2 generally agreed to a briefing schedule and potentially page  
3 limits, we didn't do it with the benefit of Your Honor's  
4 comments today, and frankly, I didn't have the benefit of what  
5 they put in. They had the benefit, essentially, of my opening  
6 draft of what I was going to put in. And so I wasn't able to  
7 really address that.

8           With regard to some of the other things, I frankly --  
9 I could not follow what Mr. Weisfelner said about the GUC Trust  
10 asset pleading other than an attempt to try to say where the --  
11 I don't know -- multiple time, the same type of argument he's  
12 making about equitable mootness in an effort to try to convince  
13 Your Honor to rethink the issue. But they actually filed a GUC  
14 Trust asset pleading. They opposed the relief that they now  
15 are saying that they're potentially prepared to concede. So I  
16 couldn't quite figure out did he make the concession or didn't  
17 he make the concession.

18           I will bet you Ms. Rubin has no idea whether he made  
19 the concession or not because if he was prepared to concede the  
20 non-ignition switch plaintiffs should be treated the same for  
21 purposes of Your Honor's equitable mootness finding, then that  
22 was what they asked to have briefed on the GUC Trust asset  
23 pleading. That is what they asked to have removed, to have  
24 Judge Furman to do in their motion to withdraw the reference,  
25 and that is what they said in their own letter Your Honor





1 should decide and there's no need for further briefing. So did  
2 they go further and basically take the issue off the table so  
3 that Your Honor doesn't have to deal with it or not? I  
4 actually don't know.

5           The other thing that I actually don't know is that --  
6 well, Your Honor asked the question, are you speaking on behalf  
7 today of the non-ignition switch plaintiffs? Mr. Weisfelner's  
8 been designated counsel for that group for purposes of briefing  
9 the four threshold issues and for purposes of the oral  
10 argument. That has never changed. That has always been his  
11 role in this case. The --

12           THE COURT: I thought that Mr. Weisfelner had said in  
13 some footnote to one of his briefs that because the  
14 non-ignition switch guys hadn't gotten the same level of  
15 discovery and stipulation crafting that the ignition switch  
16 guys had, that he didn't understand that non-ignition switch  
17 guys would be dealt with in the four threshold issues.

18           MR. STEINBERG: No, Your Honor. I think what --  
19 where the confusion is, is that we had stipulated facts with  
20 regard to their earliest recalls, which only dealt with the  
21 ignition switches, and that they said that there was no  
22 discovery that was needed further with respect to anything  
23 else. And therefore, they were asking Your Honor to decide the  
24 four threshold issues with regard to that stipulated factual  
25 record.





1           There was no stipulated factual record that had been  
2 developed for the non-ignition switch plaintiffs. So he was  
3 saying that, to the extent that I need more discovery, I need,  
4 on behalf of that group, more discovery on -- for the  
5 non-ignition switch plaintiffs to show the same level that  
6 there was a due process violation with respect to the sale  
7 order as it applies to that group of people.

8           So he always represented the group. He was just  
9 saying, I didn't have the level of discovery, which is why Your  
10 Honor's judgment said that that non-ignition switch group is  
11 bound on a stare decisis basis. They have the ability to file  
12 a no strike pleading if they want to show that they shouldn't  
13 be bound on a collateral estoppel basis. And the fact of the  
14 matter is, they did do that. They filed whatever it is that  
15 they wanted to file. And our argument was, is that they have  
16 the same problem that the ignition switch plaintiffs have, that  
17 even if there was a due process violation, there was no  
18 prejudice to them because those arguments were made already in  
19 the context of the sale hearing. So there was no due process  
20 violation and they otherwise should be bound.

21           And, Your Honor, we briefed that issue to you, as  
22 well, in the context of the no strike pleading. If he's  
23 prepared to withdraw that, that's fine. But Your Honor's order  
24 asking us to write something in the letter with regard to the  
25 non-ignition switch plaintiffs was to address the issue as to





1 how do we deal with the fact that we don't have a stipulated  
2 factual record for the non-ignition switch plaintiffs, and  
3 therefore, how do they show that they have a due process  
4 violation. Because otherwise, the sale order is clear -- I'm  
5 sorry, the decision was clear, the sale order was not amended  
6 to them. The sale order was only amended for purposes of  
7 asserting independent claims that would otherwise be proscribed  
8 by the sale order and injunction for the economic loss ignition  
9 switch plaintiffs and no one else.

10           So how did they get to that -- to have the same  
11 level? They had to do something more, they hadn't done it.  
12 Our letter says, tell the Court what it is that you want to do  
13 because otherwise, you're bound. Mr. Weisfelner basically said  
14 today, I'd rather not do anything and just get the same  
15 benefit, and they're not allowed to do that. They need to show  
16 that there was a due process violation, that there was, I  
17 guess, sufficient knowledge of Old GM so that they would have  
18 been deemed to have been a known creditor for purposes of doing  
19 something more with respect to those particular issues, not the  
20 ignition switch issue. And he hasn't done that or said what  
21 he's prepared to do on that.

22           The issue on what we had put in our letter -- and I  
23 think Your Honor has the benefit of the letter -- we were  
24 flagging the issues, Your Honor, that had already been raised  
25 and partially briefed to Your Honor were ready. So we weren't





1 trying to raise anything new or to do something. We were  
2 saying to Your Honor, here are those issues, if we wanted to  
3 argue that vis-a-vis an economic loss plaintiff, that there was  
4 no duty to warn because we didn't take the warranty liability  
5 at all. We left behind everything related to an Old GM vehicle  
6 other than the glove box warranty, the lemon law  
7 responsibility, or if that car had gotten into an accident.  
8 Everything else was left behind. We weren't going to deal with  
9 it anymore.

10 That's our construct. Your Honor had said that if  
11 there's an independent claim that would otherwise be proscribed  
12 by the sale order, that I'm going to allow that to be heard.  
13 Now, to some extent, if there's an independent claim that  
14 exists whether the sale order said something or not, I don't  
15 think that is a quarrel that New GM has, provided that there's  
16 an agreement as to what that is. And I think the concept of  
17 the marked pleadings will develop that.

18 What Mr. Weisfelner cavalierly says that we've had  
19 the benefit of the second amended complaint since June and  
20 therefore it should be easy to mark it up, I don't know if Your  
21 Honor realizes that the second amended complaint is over 1,200  
22 pages.

23 THE COURT: I'm aware of that. I'll tell you I  
24 haven't read 1,200 pages. I am not even sure if anybody's  
25 tried to lift that for me and stick it on my desk.





1 MR. STEINBERG: So the --

2 THE COURT: But I have heard that it's 1,200 pages.

3 MR. STEINBERG: So --

4 THE COURT: I assume that there are not 1,200  
5 paragraphs that I need to focus on.

6 MR. STEINBERG: No, but if -- Your Honor, if I told  
7 you there's probably 60, 70 pages that all deal with Old GM  
8 conduct and Old GM allegations, I don't think you would be  
9 surprised. You know, I'm not going to. I will resist the  
10 temptation, only to say that we flagged the issue in our  
11 letter, that we think that when you entered the judgment and  
12 you said that the pre-sale consolidated complaint would be  
13 stayed and they took all the pre-sale consolidated plaintiffs  
14 and they put it into their post-sale complaint, and then they  
15 essentially try to dress up how they were going to allege the  
16 same thing over again, that that was violative of Your Honor's  
17 judgment.

18 We will brief -- we briefed that issue in the context  
19 of the second amended complaint. We briefed the issue on the  
20 damage issue and the second amended complaint. To the extent  
21 that we think that they're saying something more that we need  
22 to brief, we'll try to do --

23 THE COURT: When you said the damage issue, did you  
24 mean punitive damages or something different?

25 MR. STEINBERG: Something different. Their second





1 amended complaint basically tries to get a recovery for every  
2 vehicle owner that owned an Old GM car or a New GM car as of  
3 2009 whether that Old GM vehicle owner actually ever had their  
4 car recalled. Their complaint in their addendum is for 70  
5 million vehicle owners based on a theory. We believe that the  
6 theory -- and it's not to be phrased as only if you're a  
7 successor liability. We actually had that argument in the  
8 context of the form of the judgment. If your claim is based on  
9 something that would be proscribed by the sale order because it  
10 relies on Old GM conduct, it's barred.

11 And we believe that that damage theory, as it relates  
12 to Old GM vehicle owners, is barred. You can't sue New GM  
13 under whatever theory you could dream of for an Old GM vehicle  
14 that you say value diminished from the time that Old GM sold  
15 the car to that vehicle owner in 2004 and 2005. No matter what  
16 they're alleging, that's a retained liability.

17 And that's what we're asking Your Honor to do, that  
18 they studied Your Honor's ruling very hard. They studied how  
19 to try to circumvent Your Honor's 2009 order very hard. And  
20 we're saying we want to expose the bright light on what they're  
21 doing and they should be told to stop it as they have done  
22 throughout, not just in the MDL court, but in various other  
23 state courts, as well. We need to put a stop to it, and that's  
24 what this -- we took Your Honor's letter to say, give me  
25 everything I need to do to finish this, what are the issues





1 that I need to tackle, and that's what we're trying to do.

2           The -- so we're prepared to -- I will say one other  
3 things on the states. The states didn't file separate briefs  
4 for the four threshold issues, but if you actually review the  
5 briefing that was done in connection with the four threshold  
6 issues and the oral argument, you will see that designated  
7 counsel picked up some of the (indiscernible) for the states  
8 and tried to present their argument. Mr. Esserman, at the oral  
9 argument, tried to put forth the state's position, and in  
10 footnotes that they try to argue the California Consumer  
11 Protection Statute, which underlies the state causes of action.

12           Your Honor should realize -- and I'm not quarreling  
13 that we shouldn't be flexible enough to change course, but Your  
14 Honor should realize that the states flouted what Your Honor  
15 said should be done. Your Honor had already said in the  
16 context of the form of judgment decision that they should amend  
17 their complaint, otherwise they're going to be stayed. Now, in  
18 the context of this letter, you're saying, let's start over  
19 again, tell them specifically why they should be stayed and  
20 I'll rule.

21           Your Honor had already ruled that what they had done  
22 was wrong. They tried to go to Judge Furman to get around  
23 that. Judge Furman said, you've got to come back before Your  
24 Honor. One easy way to deal with the states so you don't have  
25 the briefing is saying, you lost your opportunity, you didn't





1 amend when you were supposed to amend, you're stayed until the  
2 four threshold issues are determined by the Second Circuit.  
3 What they're getting here is the benefit of a redo because they  
4 didn't do what they were supposed to do before.

5           If Your Honor wants to streamline something easy, you  
6 should streamline the states and say there's no reason to  
7 bother to deal with them at all because they lost their  
8 opportunity to do a no strike pleading, they did -- whatever  
9 they did on the no strike pleading, I have in front of me, but  
10 they didn't amend and they were supposed to amend. And  
11 therefore, you knew what you were doing when you didn't amend,  
12 you now -- you took your shot at Judge Furman, you lost, and  
13 now you might as well understand that you're stayed until the  
14 Second Circuit rules, and I don't have to deal with this again.

15           I will say, though, that even if you took that tact,  
16 some of the things that we are briefing that we will need to  
17 brief are the hybrid lawsuits, right, because there's some  
18 aspects of the states' lawsuits that should go forward. It's a  
19 hybrid lawsuit. It deals with not just Old GM vehicles, it's  
20 New GM vehicles, too. They just didn't plead it right and they  
21 didn't care when you told them, you didn't plead it right. And  
22 so they have to -- we have to deal with the hybrid lawsuits  
23 anyway on the consumer protection statutes.

24           We briefed that a little in connection with the  
25 second amended complaint. We actually briefed that issue to





1 some extent, both sides did, in context of the Old GM threshold  
2 issue as part of the four threshold issues. We had to write  
3 briefs as to whether what was pled, not in the second amended  
4 complaint, but the first amended complaint, whether that was  
5 violative of the sale order. We had sections of our brief  
6 dealing with fraud, fraudulent concealment, misrepresentation,  
7 California statute. They tried to put in whatever they wanted  
8 to do. We actually briefed more of it than they did. And now  
9 we're doing it again because Your Honor ruled they it in a  
10 general fashion, but really the proof is in the pudding. That  
11 proof is in the pudding when you put in 1,200 pages. We have  
12 to tell you, and we have to do it in a way, Your Honor, that  
13 makes sense.

14           One of our exhibits showed that we tried to deal with  
15 the stare decisis collateral estoppel. We have 80 separate  
16 actions, all have accidents in the state court, not bellwether  
17 cases, not in the MDL, Bavlsik is one of them where there's the  
18 punitive damage issue. Frankly, Your Honor had the punitive  
19 damage issue in front of you six weeks ago. The Walton no  
20 strike pleading actually had the -- that whole no strike  
21 pleading was the punitive damage issue. The fact of the matter  
22 was is that Your Honor lost that opportunity and New GM lost  
23 that opportunity to get clarity on that issue because Walton  
24 decided to withdraw its request for punitive damages.

25           THE COURT: That was a post-petition accident with





1 bases for punitives premised on pre-sale conduct?

2 MR. STEINBERG: Yes, Your Honor, and it was a pre-  
3 sale vehicle. It's the same issue as what's in the bellwethers  
4 right now.

5 THE COURT: Uh-huh.

6 MR. STEINBERG: It was a -- I mean, the brief that we  
7 filed on Friday has many similarities to the Walton brief that  
8 we filed. So, Your Honor, I could go on, but I think today's  
9 not the day for a tit-for-tat for me to try to refute  
10 everything that everybody else said. Your Honor's looking for  
11 a procedure how to go forward. I think we can deal with all  
12 the bellwether issues in September. We could do the marked  
13 complaints for the bellwether issues, but I do think that they  
14 should mark up -- they should eliminate that which they know is  
15 violative of the order so that we're not having to mark up  
16 something further than that.

17 And then, I think we can agree on a briefing  
18 schedule. We had asked for an accelerated briefing schedule.  
19 I think in our context, we had said that we can do opening  
20 brief by this Friday. I think, frankly, if Your Honor wanted  
21 to deem my Bavlsik pleading to be the opening brief and give me  
22 a --

23 THE COURT: Opening brief on --

24 MR. STEINBERG: Punitives.

25 THE COURT: -- on punitives by next Friday?





1 MR. STEINBERG: Well, I had it -- in my briefing  
2 schedule, I had it for this Friday, September 4th. We're  
3 already into September as of tomorrow. And then I had given  
4 them to, I think, September 16th or something like that, and --

5 THE COURT: Well, September 16th is a little elusive,  
6 not just for the most religious people in the New York  
7 community, but for --

8 MR. STEINBERG: Yeah.

9 THE COURT: -- a lot of people --

10 MR. STEINBERG: I think September 18th.

11 THE COURT: -- because it covers two days of holiday  
12 for a lot of people.

13 MR. STEINBERG: Your Honor, I didn't care. If they  
14 thought they needed a few extra days, I didn't care about any  
15 of that. I wanted to do something that reflected two things.  
16 One is I didn't even know -- I knew that there was a bellwether  
17 issue out there and Judge Furman would give us clarity on that,  
18 but when I wrote this letter, I didn't have the benefit of his  
19 remarks on Friday.

20 THE COURT: From this past Friday.

21 MR. STEINBERG: From this past Friday. But I knew I  
22 had to deal with this issue on an expedited basis because of  
23 cases like Bavlsik. Right? I have Bavlsik scheduled to go to  
24 trial in Missouri, in a Missouri court, in middle of September.  
25 And so on Friday, when we filed our no strike pleading with





1 Your Honor, my counsel in Missouri filed a pleading asking for  
2 an extension of time so that Your Honor could deal with the --

3 THE COURT: Where do we stand on that? Because no  
4 matter how much I accelerate, I can't get it done by September  
5 4th.

6 MR. STEINBERG: I agree with that, so we recognized  
7 that it would be hard to try to force this issue into today's  
8 status conference. And so the return date on the request for  
9 an extension from the Missouri court is this coming Friday,  
10 September 4th. If we don't get the relief that we need by  
11 September 4th, we may very well try to tee up something before  
12 Your Honor to try to preserve the status quo so that Your Honor  
13 has the benefit of all the briefing.

14 THE COURT: In the nature of a TRO?

15 MR. STEINBERG: In the nature of a TRO. This has  
16 been done -- Judge Furman has had to tackle this type of issue  
17 in connection with coordinating the state cases, and many a  
18 times, he's able to speak to the state court judge there and  
19 say, this is what I need, and the papers that we filed on  
20 Friday basically said that we expect the punitive damage issue  
21 to be resolved in two to three months and that we're asking for  
22 an extension of the trial date so that it goes forward in that  
23 period of time.

24 So we were guided by cases like Bavlsik, and there  
25 may be other cases like that, whether it's not September 15th,





1 but it's October 10th, October 30th. We were guided by that.  
2 Frankly, we thought Walton might have given us the clarity that  
3 we needed to go forward, but you don't go forward on an action  
4 when the other side says, I capitulate. You tell the judge  
5 that they capitulated so he doesn't have to write a decision on  
6 it.

7           And we know that could be fair to the other side,  
8 that they will wanna weigh in on this issue, as well. To the  
9 extent that they didn't weigh in on Walton, they didn't weigh  
10 in on Walton, but we know now that they want to weigh in on the  
11 other -- for the other cases. So we try to set up this  
12 accelerated briefing schedule, and we did believe that if  
13 everything is done in September, Your Honor will be able to  
14 tackle the issue quickly and give Judge Furman and the other  
15 judges the guidance that they need so they know how to go  
16 forward in their cases.

17           So on the bellwethers, we're committing to do the  
18 markup of the six complaints and we're prepared to do the  
19 briefing, whatever works, on the punitive damage issue. And if  
20 they want to have oral argument, I'm not shy to have an oral  
21 argument if Your Honor believes an oral argument is required.  
22 If it does, then I'm happy to do the oral argument whenever  
23 Your Honor wants to do it. And that will address Judge  
24 Furman's concerns on the bellwethers.

25           The rest of what's involved here, marking up of the





1 pleadings and how to deal with the economic loss cases, I  
2 almost think, Your Honor, that we need the benefit of perhaps  
3 another discussion amongst the group to see what kind of  
4 schedule we should put forward and how to present it to you  
5 with the benefit of your comments. If the people think that we  
6 should just do it all now, I guess we could do it now and I  
7 could give you my thoughts on the fly, but I do think that  
8 everybody heard you say the briefing was too long and the  
9 timing is too long and you need to have that done quicker.

10           We have to deal with the fact that we're being asked  
11 to mark up a 1,200-page complaint. We're being asked to mark  
12 up complaints that otherwise are stayed right now, we believe,  
13 but to try to get greater clarity. And to some extent we're  
14 interested in greater clarity, as well, too, at some point in  
15 time. We're not dilatory. We actually want Your Honor's  
16 ruling so that it can then set the table for what should happen  
17 next. A large part of the delay has been a fight over whether  
18 you should be the gatekeeper that you were intended to be in  
19 2009.

20           So I hope that is responsive enough to what was said  
21 before I took the podium. I obviously have other responses to  
22 other things, but I disagree with when people tried to argue  
23 substance because I just don't think Your Honor has the desire  
24 to hear substantive arguments as to why we think our legitimate  
25 -- these are legitimate things to raise to you. You'll get the





1 benefit of our briefing, and there will come a day when I'll be  
2 able to give the oral substance response to that. Thank you.

3 THE COURT: All right. Thank you.

4 Ms. Rubin.

5 MS. RUBIN: Thank you, Your Honor. I'm Lisa Rubin of  
6 Gibson, Dunn & Crutcher for the record. I represent the GUC  
7 Trust, and I'm here this morning on behalf of the GUC Trust and  
8 the unitholders. Mr. Golden of the Akin Gump firm is also on  
9 the phone, and I expect that if he has anything to add at the  
10 conclusion of my presentation, Your Honor, he will ask for an  
11 opportunity to address the Court briefly.

12 Your Honor, you said at the outset of your comments  
13 that you wondered whether it made sense to push off what you  
14 recognized were the independent issues facing the GUC Trust.  
15 And respectfully, Your Honor, I would say no, and here's why.

16 All of the parties before you agree that the issues  
17 presented by the GUC Trust asset pleadings are very limited  
18 ones. They're issues that the judgment asked the parties to  
19 put before your Court, and specifically Paragraph 13(d) of the  
20 judgment required that if any party who was not affected by the  
21 judgment, specifically the two categories, non-ignition switch  
22 plaintiffs, if they had a good-faith basis as to why Your  
23 Honor's equitable mootness holding and the April 1st decision  
24 should not apply to them, they should set that forth in a GUC  
25 Trust asset pleading.





1 THE COURT: This goes for the purpose of converting  
2 what is now stare decisis into res judicata. Am I correct?

3 MS. RUBIN: Yes. Yes. And, Your Honor, you  
4 recognized in a May 27th decision to explain some of the  
5 decisions you made about the judgment where there were  
6 disagreements before the parties. You said specifically as  
7 follows -- and if you'll excuse me, Your Honor, I'm reading  
8 from my Blackberry from your decision -- at Page 8 of that  
9 decision, you said:

10 "The decision will be stare decisis for the non-  
11 ignition switch plaintiffs subject to the usual right  
12 of any litigant to show that a judicial opinion is  
13 distinguishable, but it will not be res judicata."

14 Your Honor then continued:

15 "The Court agrees with New GM, the GUC Trust, and the  
16 unitholders that it is time to come to closure on  
17 whether there is any basis to excuse the non-ignition  
18 switch plaintiffs."

19 And by that, I believe Your Honor meant two  
20 categories of non-ignition switch plaintiffs, the non-ignition  
21 switch plaintiffs with economic loss claims represented by  
22 Mr. Weisfelner and the non-ignition switch plaintiffs with  
23 personal injury claims represented, as I understand, by  
24 Mr. Weintraub, from the provision of the sale order, that's not  
25 something that I'm here to discuss, and the Court's mootness





1 conclusions. That's the thing I am here to discuss.

2 And that's what Paragraph (d) of the judgment was  
3 designed to do. It gave the parties 17 business days after the  
4 entry of the judgment to come forward and say what their  
5 good-faith basis was for why that equitable mootness holding  
6 should not apply to those two categories of non-ignition switch  
7 plaintiffs.

8 And then you had two pleadings come in, Your Honor.  
9 You had designated counsels' omnibus motion, which included  
10 their GUC Trust asset pleading, and then you had what  
11 Mr. Weintraub captioned a reservation of rights on behalf of  
12 his clients. Now, for the reasons the GUC Trust and the  
13 unitholders set forth in a brief before Your Honor, we would  
14 respectfully submit that they didn't give you those reasons.  
15 And, in fact, Mr. Weisfelner this morning has stated to you  
16 that we are probably correct that -- I'm not sure why probably  
17 as opposed to just correct; maybe it's just a difficult  
18 concession for Mr. Weisfelner to make -- that having not  
19 provided to you a good-faith basis other than the existence of  
20 the appeal itself, these two categories of non-ignition switch  
21 plaintiffs didn't tell Your Honor why the equitable mootness  
22 holding shouldn't be applicable to them.

23 So, Your Honor, everyone has come before you today,  
24 and you'll see in our letter, the GUC Trust asset pleading is  
25 ripe for Your Honor's decision. It was a limited issue. No





1 party is suggesting that there be any more briefing. No party  
2 has suggested that there be oral argument. And it's a very  
3 limited pleadings at issue. It's Mr. Weisfelner's omnibus  
4 motion to the extent that it has a GUC Trust asset pleading at  
5 the end, and the reservation of rights submitted by  
6 Mr. Weintraub.

7           Mr. Weintraub will tell you that that's not intended  
8 to be a GUC Trust asset pleading, but the date of its  
9 submission and the issues that he discusses in it make it very  
10 difficult for me to understand why it's not intended to be that  
11 GUC Trust asset pleading. In any event, if it's solely  
12 intended as a reservation of rights, he hasn't complied with  
13 Paragraph 13(d) of the judgment, which required the parties to  
14 set forth their good-faith basis why the equitable mootness  
15 holding shouldn't pertain to them.

16           Now, why does this matter? Your Honor said in your  
17 May 27th decision that it was time to come to closure for the  
18 liquidating trust and its beneficiaries, and we couldn't agree  
19 more. None of the issues that I've raised here today, Your  
20 Honor, impair or impede the resolution of what I think the  
21 parties to both sides of me would agree are maybe more pressing  
22 issues, but the liquidating trust has a desire to get on with  
23 its business, to move on and to stop spending money  
24 unnecessarily on things that we don't think concern us.

25           One of the things that's so, I guess, baffling to me





1 is that Mr. Weisfelner came up this morning and he said that he  
2 wants to reserve -- in addition to his umpteenth attempt at  
3 trying to reargue the equitable mootness holding, he says it's  
4 okay with him if you decide the GUC Trust asset pleading so  
5 long as you cordon off some sort of attempt for his parties to  
6 tell you why the accordion feature should be reserved for them  
7 and why they should have a preserved right to brief the  
8 accordion feature. Respectfully, Your Honor, that's a  
9 distortion of your April 1st decision, that's a distortion of  
10 your May 27th opinion, and that's a distortion of the judgment  
11 itself, all of which make amply clear that Your Honor decided  
12 the issues before Your Honor with ample consideration of the  
13 accordion feature.

14 And let me go through why that is. Paragraph 6, Your  
15 Honor, of the judgment makes clear that the equitable mootness  
16 holding as it applied to the ignition switch plaintiffs applied  
17 to the GUC Trust assets past, present and future. That was  
18 language about which the parties disagreed heartily during the  
19 negotiation of the judgment. Your Honor was asked to pass on  
20 that issue, and Your Honor took up that issue and passing on  
21 the judgment.

22 And, Your Honor, in your May 27th decision, which was  
23 meant to amplify certain of the decisions you made in coming to  
24 the judgment, you discussed the --

25 THE COURT: May 27th is the form of judgment





1 decision?

2 MS. RUBIN: No. That -- it's the form of judgment  
3 decision, Your Honor, that's correct. And on Page 9 of that  
4 decision -- and again I'm reading from the decision -- Your  
5 Honor says as follows. Your Honor was trying to describe why  
6 there was certain language about the GUC Trust assets in  
7 respect to Section 502(j), and you said:

8 "It was necessary in the Court's view to include  
9 different provisions in the judgment with respect to  
10 new claims as opposed to the reconsideration of old  
11 ones." And I quote, "When Old GM creditors receive  
12 distributions under the plan and when unitholders,  
13 even if as after-market acquirers of GUC Trust units,  
14 acquire their units, they had a reasonable  
15 expectation that the total universe of claims filed  
16 against Old GM would not increase, and while they  
17 knew there was an accordion feature" -- these are  
18 Your Honor's words -- "they also knew that claims  
19 exposure would result with exceptions exceedingly  
20 difficult to show only from previously filed claims."

21 And that's Pages 9 to 10 of the May 27th decision on  
22 form of judgment. That to me indicates that contrary to  
23 Mr. Weisfelner's very impassioned presentation, Your Honor knew  
24 full well there was an accordion feature when you made your  
25 decision on April 1st, you knew full well that accordion





1 feature was part of what remained in dispute between the  
2 parties and negotiating in the form of judgment, and Your Honor  
3 took that all into consideration.

4           What Mr. Weisfelner is trying to do now is no less  
5 tactical than what he tried to do here in February, what he  
6 tried to do last November in not seeking to enjoin the  
7 distribution that my client made. Mr. Weisfelner has been  
8 presented at various points in this proceeding with decision  
9 points about who he wants to pursue his claims from, where he  
10 wants -- whose pocket he wants to pick, and his highest  
11 priority pocket is Mr. Steinberg's, it's not mine. But that's  
12 Mr. Weisfelner's decision.

13           And again he has not filed the motion for reargument  
14 of the April 1st decision. He has not even filed the claim,  
15 nor has Mr. Weintraub. So even though Your Honor's April 1st  
16 decision invites them to file late-filed claims, arguably so  
17 Your Honor could resolve whether those claims are allowed  
18 pending appeal so that if they win on their appeal to the  
19 Second Circuit, there wouldn't be delays in compensating them,  
20 they still haven't filed the proof of claim. Not a class  
21 claim, not an individual claim, no claim at all.

22           And nonetheless they stand here before you this  
23 morning and say that it's okay with them if you decide the GUC  
24 Trust asset pleading so long as they have a right to argue that  
25 the accordion feature somehow applies to them. They're putting





1 the cart before the horse, Your Honor. They are still playing  
2 tactical games with the Trust, and they are pushing for a stay  
3 of distributions pending appeal for a category of people that  
4 don't even have claims, let alone a decision affecting them,  
5 let alone an appeal that involves them.

6 So what I'm here before you, Your Honor, to ask for  
7 is that you narrow the issues before you to the extent that you  
8 can. Again, no oral argument is required. No further briefing  
9 is required. Let's resolve as much as can be resolved as  
10 possible for the liquidating trust and its existing  
11 beneficiaries.

12 And further, Your Honor, I believe that resolving the  
13 GUC Trust asset pleadings will also facilitate ongoing  
14 settlement discussions. Your Honor knows that the GUC Trust  
15 has reporting obligations, and therefore I'm not at liberty to  
16 say anything further about those settlement conversations other  
17 than to say to the extent that Your Honor can resolve  
18 outstanding issues affecting the GUC Trust, I believe they  
19 would and could go a long way to forwarding conversations among  
20 the parties.

21 Your Honor, I'll rest now and I'll take any questions  
22 if you have them.

23 THE COURT: All right. Thank you.

24 Mr. Golden, do you need to supplement what Ms. Rubin  
25 said?





1 \*T MR. GOLDEN: I don't, Your Honor. Thank you for  
2 letting me participate by phone. I think she thoroughly  
3 covered the points I would have covered.

4 THE COURT: Okay. Mr. Weisfelner?

5 MR. WEISFELNER: Just quickly in terms of a reply,  
6 and I'm going to get to the GUC Trust in a bit, but I do  
7 believe that, with no insult intended to Ms. Rubin or her  
8 clients, they are the tail wagging the dog.

9 Your Honor, I'm not a trial lawyer by trade, but as I  
10 was listening to Mr. Steinberg's presentation to the Court, it  
11 occurred to me that -- or I started imagining how GM, New GM,  
12 would otherwise go about protecting their interests absent  
13 asking Your Honor, in our view, to re-litigate a lot of the  
14 issues that they lost on, and in particular the whole issue of  
15 independent claims.

16 So you've got a jury in the jury box, you've got a  
17 judge, and there's litigation over punitive damages. And it  
18 seems to me that the fastest way to resolve the issue -- not,  
19 again, being a trial lawyer -- is for New GM to contend that  
20 there needs to be an instruction to the jury, and the Court  
21 ultimately resolves the instruction to the jury that sounds  
22 something like, you may not find punitive damages against New  
23 GM, even if you found compensatory damages against New GM  
24 because, by the way, if you didn't find compensatory damages,  
25 there's no predicate for punitive damages.





1 But having found compensatory damages, you're now  
2 being asked to consider punitive damages. Here's my  
3 instruction to you, jury, you may not find punitive damages  
4 against New GM that are predicated on things Old GM did.  
5 That's for the economic loss plaintiffs.

6 For the personal injury plaintiffs, depending on the  
7 outcome of their argument with regard to whether or not  
8 punitive damages on post-sale accidents were part of their  
9 assumed liabilities -- and I've read the language and I think  
10 Weintraub is right, but assuming that he somehow loses on that  
11 issue, again, why isn't it resolved by virtue of a jury  
12 instruction where instead of going through this whole  
13 rigamarole, this whole retrial, this whole effort to delay and  
14 prevent Judge Furman or the courts in California or the courts  
15 in Arizona from dealing with their actions?

16 We see New GM once again saying, whoa, slow down, I  
17 don't want to get anywhere near a trial, anywhere near a jury  
18 where these issues could be easily resolved by virtue of a jury  
19 instruction or a court instruction. They instead want to slow  
20 the whole train down and take one more bite at the apple.

21 Judge, can you please tell us that when you defined  
22 independent claim, you really need to go back and figure out  
23 whether or not your definition of independent claim somehow  
24 violates the contractual clause of retained liabilities.  
25 Because if it's a retained liability, it can't be an





1 independent claim. What? We did this already.

2           The thing that amazes me about New GM's position is  
3 -- and, Your Honor, I thought said it at the end of my prior  
4 remarks. Is it possible for a bankruptcy court to approve a  
5 sale in the 363 context where whether or not the buyer engaged  
6 in bad faith, the buyer is entitled to what I refer to as a get  
7 out of jail free card?

8           Listen, you can independently start polluting the  
9 environment all over again. You can independently do whatever  
10 it is that the old debtor, the seller, was once upon a time  
11 accused of. You can do it on your own dime, your own time.  
12 You can do it knowingly and you've got a get out of jail free  
13 card. That's not the law.

14           And when Mr. Steinberg got up to address the Court,  
15 he never got close to that issue. He only said that, well, you  
16 know, the non-ignition switch plaintiffs can't take the  
17 position that they've got independent claims. They have no  
18 claims because the sale order is still binding on them until  
19 they can show a due process violation. Why?

20           So until and unless I show a due process violation,  
21 the buyer, New GM, can do whatever it wants to do and it can't  
22 be sued by anybody, anywhere, anytime. He's never addressed  
23 that.

24           We're here for procedural purposes. It seems to me  
25 crystal clear that what Your Honor needs to do for Judge Furman





1 is Your Honor needs to be the gatekeeper as to whether or not  
2 the bellwether trials properly assert punitive damages. That's  
3 issue number one. And I think I will adopt a page from  
4 Mr. Steinberg's suggestion that you send all of us back to the  
5 drawing board on what's going to get filed, when and how many  
6 pages, understanding as we now do, and we didn't when we wrote  
7 our respective letters, where Judge Furman's focus of attention  
8 is. And I think we all need to do our best to try and get that  
9 stuff out of the way.

10           And I thought we were going down the right track  
11 procedurally when we focused on punitive damages, but then we  
12 got diverted again when Mr. Steinberg said, we've got to focus  
13 on punitive damages, we've got to focus on imputation. Well,  
14 Your Honor, did you or did you not say today that you thought  
15 you were crystal clear on imputation? What else needs to be  
16 determined on imputation?

17           I think, but I don't know -- I think that what Judge  
18 Furman may have been struggling with was Your Honor's  
19 commentary in your decision that nothing about imputation is to  
20 be used outside the context of the four threshold issues, and  
21 in particular doesn't apply to the MDL. Well, Your Honor, I  
22 don't think we're supposed to be re-litigating imputation as a  
23 matter of fact or as a matter of law. I think the only thing  
24 Judge Furman needs, unless GM can convince you otherwise, is  
25 that to the extent that imputation of bad knowledge to New GM,





1 which is the bad actor in the complaints that are alive, the  
2 law of imputation of the knowledge of New GM employees is not a  
3 matter that Judge Furman, with all -- that Judge Furman needs  
4 your help with, and that's not what he was asking.

5 I think he was asking for clarification of the  
6 language that said, you can't use the imputation for part of  
7 the MDL. But he can use his own brain. He can allow the  
8 parties to rebrief imputation. It's a different imputation.  
9 It's the question of knowledge of New GM employees, knowledge  
10 that New GM garners from books and records that it adopts, the  
11 extent to which all of that gets imputed to New GM for purposes  
12 of independent claims against New GM.

13 So I don't know why we're briefing that on a triage  
14 basis. That's an issue that ought to be determined by the  
15 trial courts when they trial their cases with proper jury  
16 instructions.

17 THE COURT: Mr. Weisfelner, where is the statement  
18 that has caused the ambiguity about imputation being capable of  
19 being used or not being capable of being used in the MDL?

20 MR. WEISFELNER: I'll find it for you in a second,  
21 Judge. I think it was part of the judgment itself.

22 MR. STEINBERG: Your Honor, it is part of a June 1  
23 judgment.

24 THE COURT: And the judgment is contrasted to either  
25 of the two opinions that preceded it.





1 MR. STEINBERG: That's correct because the parties  
2 had to deal with the fact that there was a stipulated factual  
3 record, and they wanted to make sure that the stipulated  
4 factual record was limited -- it was only done for purposes of  
5 the four threshold issues, so we wanted to have clarity on that  
6 issue. And this particular point which was raised in my letter  
7 was because notwithstanding that specific provision in the  
8 judgment, not just in the MDL, but more the other proceedings  
9 outside the MDL in the state court, they're citing the findings  
10 of the judgment in prohibition to that. So this was not done  
11 really for Judge Furman. This was done for the other courts to  
12 make sure those plaintiffs don't abuse the judgment. And I  
13 don't know what Mr. Weisfelner is intuiting what was in Judge  
14 Furman's head.

15 MR. WEISFELNER: Your Honor, again, I think we're all  
16 in agreement that the language comes from the judgment. I  
17 can't lay my hands on it that quickly, but here's the problem.  
18 Your Honor determined that --

19 UNIDENTIFIED: Here's the language, 15(d).

20 MR. WEISFELNER: Thank you. For these reasons and  
21 others, the findings of fact --

22 THE COURT: What paragraph are you reading from,  
23 please?

24 MR. WEISFELNER: I'm reading from Paragraph 15(d).

25 THE COURT: Fifteen delta?





1 MR. WEISFELNER: Fifteen delta. That's right, Your  
2 Honor. Page 14 of the 21-page judgment. And what it provides  
3 in substantive part is the findings of fact in the decision  
4 shall apply only for the purposes of this Court's resolution of  
5 the four threshold issues and shall have no force or  
6 applicability in any other legal proceeding or matter,  
7 including, without limitation, MDL 2543. Notwithstanding the  
8 foregoing and all events, however, the decision and judgment  
9 shall apply with respect to the Court's interpretation of the  
10 enforceability of the sale order and the actions of the  
11 affected parties that are authorized and proscribed by the  
12 decision and judgment.

13 And again, just so that I'm crystal clear on this,  
14 the question of whether or not the 24 Old GM employees that  
15 became New GM employees as of the effective date of this sale,  
16 whether their collective knowledge can be imputed to New GM, if  
17 that's an issue in any other case as it is in the second  
18 amended consolidated complaint, as I believe it is in the  
19 California and Arizona actions, then it seems to us that those  
20 courts can take a look at those allegations and take a look at  
21 the proof that's made by those parties, following whatever  
22 additional discovery those parties are ultimately pursuing, and  
23 those courts can determine, based on that evidence, whether or  
24 not imputation of that knowledge, or for that matter any other  
25 knowledge, to New GM is appropriate as a matter of fact and as





1 a matter of law.

2           If we are, all of us, focused on something that's  
3 efficient, that affords other courts the opportunity to get on  
4 with their cases and calendars. Why in the world do we need to  
5 come back to the gatekeeper who's already made a determination  
6 with regard to imputation with regard to stipulations between  
7 the parties and now ask you all over again to make an  
8 imputation decision that's bereft of the kinds of facts and  
9 evidence and argument that are ultimately going to be made in  
10 those cases? I don't think that's what Judge Furman, with all  
11 due respect to him, was asking you to do. I think what he was  
12 asking was for some clarity about how the decision, to the  
13 extent it relied on stipulated facts, was not to apply in the  
14 MDL.

15           And I think what Your Honor had in mind -- once upon  
16 a time, you asked me whether or not you could utilize your  
17 knowledge of the background facts of this case in order to  
18 render ultimate decisions, and I said unless you were prepared  
19 to have a lobotomy, I didn't think we could avoid it. Your  
20 Honor, my point here is that the ultimate determination of  
21 whether or not employee knowledge or books and records, facts  
22 that are contained in those books and records, can be imputed  
23 to New GM is not a determination that I think the Bankruptcy  
24 Court could or should be making without the benefit of  
25 discovery and trial on the merits.





1 And courts of competent jurisdiction are amply able  
2 to ultimately determine whether or not imputation, under the  
3 law of whatever jurisdiction will govern -- I presume there may  
4 be some differences on imputation. It's not necessarily  
5 federal common law, I don't know, but it's not something that I  
6 think the Bankruptcy Court rightfully ought to be focused on,  
7 and I don't think it's what Judge Furman had in mind in terms  
8 of triaging issues.

9 Now, the other thing that Mr. Steinberg then slipped  
10 in when he talked about what he wants to triage, he talked  
11 about punitives because you can't get away from what Judge  
12 Furman said about that. He talked about imputation, and I  
13 think, quite frankly, he's banging his head against the wall,  
14 but he wants to see what happens. Maybe Your Honor will bite  
15 on it.

16 The third thing he talked about is other causes of  
17 action proscribed by the sale order and original injunction and  
18 causes of action that are still proscribed based on Your  
19 Honor's sale order and injunction. Well, that's a whole  
20 another reargument again. I went through carefully a list of  
21 the issues in his letter, and I think I made it clear that in  
22 terms of the way we should be going forward by way of a  
23 schedule and what we ought to be triaging, and in an effort to  
24 make our next meet and confer reasonable, Judge, we need some  
25 direction beyond the triage that Judge Furman says he needs --





1 THE COURT: Well, I can give you a little more  
2 direction that may help your meet and confer, and it ties into  
3 one of the very few -- well, perhaps very few is an  
4 overstatement -- what I consider to be one of the closer  
5 questions that you guys were arguing about, which is that when  
6 people have not shown a due process violation yet, that being  
7 the subset of your larger constituency with non-ignition switch  
8 issues, where they have not shown that 24 people or even one  
9 person at New GM had enough knowledge to make them knowing  
10 plaintiffs -- or knowing claimants, excuse me -- whether they  
11 should get benefits that the remainder of your constituency won  
12 in the last go-around. And Mr. Steinberg's position, as I  
13 understand it, is that even if it is so, that if I were ruling  
14 on a clean slate with the ability to be heard back in 2009,  
15 that what I ultimately ruled with respect to environmental  
16 claimants and narrow view of economic loss claimants, vis-à-vis  
17 ignition switches, whether they should or should not be  
18 beneficiaries of that ruling, then they haven't established a  
19 due process violation. That was the context in which I said  
20 what I was saying.

21 Now, hopefully that's not too cryptic, but the  
22 non-ignition switch plaintiffs' inability or inaction to have  
23 yet established a due process violation to give them the  
24 benefits that the remainder of your constituency got is, in my  
25 view, a big issue.





1 MR. WEISFELNER: Okay. I mean, again, just as a  
2 matter of fact, discovery with regard to the non-ignition  
3 switch defects that are at issue are ongoing. And while --

4 THE COURT: I understood that, and it certainly was  
5 ongoing back on April 15th --

6 MR. WEISFELNER: Right.

7 THE COURT: -- which is why the opinion didn't cover  
8 them.

9 MR. WEISFELNER: Right. But, Your Honor, look, it  
10 still seems to me that, you know, one could argue that whether  
11 or not you're the beneficiary of a due process violation  
12 because you were a known creditor, nevertheless, Your Honor's  
13 sale order could not as a matter of constitutional law, Second  
14 Circuit law, have provided New GM with a get out of jail free  
15 card with regard to its post-sale independent acts and conduct.  
16 I just don't think that the --

17 THE COURT: I understand that's the argument you're  
18 going to make. You had telegraphed that before. My guess is  
19 that Mr. Steinberg is going to have a different view, and  
20 that's why I called it an issue rather than something that I've  
21 decided.

22 MR. WEISFELNER: Okay. To the extent that that  
23 remains an issue, then in terms of triaging things, it seems to  
24 me that we need to get that issue teed up quickly because to  
25 the extent that people, either New GM or us, depending on who





1 loses, needs to appeal that decision, they ought to get  
2 started. But again, in terms of triaging the remaining issue,  
3 what frustrates us on the plaintiffs' side is every opportunity  
4 that New GM can take, it does take in an effort to try and  
5 reinterpret, redefine, cut down on, narrow the scope of the  
6 definition of independent claims.

7           And they're not all, as Mr. Steinberg indicated,  
8 briefed in the no strike/no stay pleading because we didn't see  
9 any of these issues emanating from New GM, frankly, until after  
10 Judge Furman denied the motions to withdraw the reference. And  
11 I think that emboldened New GM to try and take another bite at  
12 the apple.

13           And, Your Honor, I think maybe the right thing to do  
14 is, with your guidance, send us back to the drawing board. We  
15 will try desperately hard again to come up with an appropriate  
16 scheduling order with the right issues. But again, to the  
17 extent that New GM insists on having Your Honor act as a  
18 gatekeeper on issues that we believe are more properly resolved  
19 in the context of trial because we don't think it impacts Your  
20 Honor's role as a gatekeeper -- we think the gatekeeper role is  
21 tell us if this is an independent claim or not an independent  
22 claim. And Mr. Steinberg can tell you there are 60 pages of  
23 allegations with regard to Old GM, and our point is you can  
24 have 600 pages of allegations with regard to Old GM. Focus on  
25 the claim and cause of action. Focus on what it is that you





1 want recovery for. Focus in on what it is you're asking the  
2 jury to decide based on instructions from the judge.

3           And you will see that the liability we assert is New  
4 GM's liability, that the allegations regarding Old GM are of  
5 necessity background information. You don't start a story, if  
6 you will, about New GM -- I'm sorry, GM manufacturing cars with  
7 known defective components beginning in '03 and '04, going  
8 through all sorts of evaluations, tests, and accumulation of  
9 information that the ignition switch defect, in fact, presented  
10 a known safety defect that was killing people throughout the  
11 country, that it chooses not to bring to the attention of the  
12 Court during its bankruptcy proceeding, that New GM remains  
13 completely well aware of from the date it's born and maintains  
14 that cone of silence throughout the period from 2009 through  
15 2014.

16           And I'm here today to assess liability -- I'm talking  
17 to a prospective jury -- against New GM because Old GM's gone  
18 and Old GM isn't here and Old GM can't pay for this, and New GM  
19 shouldn't be made to pay for something that was an Old GM bad  
20 act or bad conduct. Now, I'm going to argue to the jury the  
21 facts. I don't want to start the case by saying as of some  
22 date in 2009, New GM was born.

23           THE COURT: I know that you don't want to start your  
24 case that way, but you are going to start the case within the  
25 constraints of what the law requires.





1 MR. WEISFELNER: Absolutely.

2 THE COURT: And whether it's done by a curative  
3 instruction, which anybody who's ever been a litigator has to  
4 kind of laugh at, or a motion in limine, and then whether that  
5 motion in limine comes from the trial judge or is required by  
6 the gatekeeper judge is a matter to be determined under the law  
7 rather than your tactical preferences. I used to be a trial  
8 lawyer. I know what I like to do. I don't always get what I  
9 want.

10 MR. WEISFELNER: And, Your Honor, again, all I'm  
11 suggesting is that the practical reality of this Court being  
12 asked to be the gatekeeper not once, not twice, not three  
13 times, but multiple times in situations where you've got a  
14 lawsuit pending before the District Court, you've got two  
15 lawsuits pending, one in Arizona, one in California, you've got  
16 bellwether cases, you've got a case on presentment that the New  
17 GM wants to get you out of, I forgot, Minnesota, Minneapolis,  
18 some other place.

19 THE COURT: Missouri.

20 MR. WEISFELNER: Missouri, and God knows how many  
21 other complaints they're going to want to bring to your  
22 attention. It seems to me that as a matter of judicial  
23 economy, if nothing else, how many times can they knock on your  
24 door when the issue is just as well resolved in the trial  
25 court? And frankly, you know, we believe that Your Honor has





1 done yeoman's work with regard to your gatekeeping function.

2           Your Honor, unless you have any questions, I should  
3 get back to Ms. Rubin's commentary with regard to the GUC  
4 Trust. Your Honor, it's their call. As I said before, if they  
5 want to move forward with their September 22nd trial on whether  
6 there's any basis to prevent them from making the last  
7 distribution, so be it. Our argument is and has always been,  
8 and I can read Your Honor's decisions as well as Ms. Rubin can,  
9 our view is whether Your Honor intended it or not as a matter  
10 of appeal and the likelihood of prevailing on appeal. Any  
11 decision on equitable mootness has to be predicated on the  
12 inability to unscramble the egg and afford a party an effective  
13 remedy without doing damage to the damaged party.

14           And Your Honor we understood to say in your equitable  
15 mootness decision that it would be unreasonable for any number  
16 of reasons, including tactical decisions that I've been blamed  
17 for, to ask the unitholders to give back what they've already  
18 gotten or to be disappointed in their reasonable expectations  
19 going forward.

20           And, Your Honor, it's my belief, and this is what the  
21 appeal is all about, that that determination as it relates to  
22 the accordion feature was inappropriate because if there is an  
23 effective remedy that can be crafted for us, that doesn't  
24 disappoint their reasonable expectations, i.e. the accordion,  
25 then whether Your Honor thought about it or didn't think about





1 it, and I guess in particular if Your Honor thought about it  
2 and said, I'm not going to accordion that at all together,  
3 forget it, you can never attach the -- attack the accordion  
4 feature, that that was an inappropriate decision on Your  
5 Honor's part in the law of equitable mootness and we'll leave  
6 it to the Second Circuit.

7 I didn't ever ask Your Honor to reconsider or rewrite  
8 it or rethink it. It is what it is. And as to the money  
9 that's in the bank, we'll deal with it as a matter of a trial  
10 on the 22nd, unless Your Honor determines that you've got  
11 better things to do. But it's Your Honor's courtroom. Your  
12 Honor controls it. We'll be here when Your Honor tells us to  
13 be here. Thank you.

14 MR. STEINBERG: Your Honor, my turn, please?

15 THE COURT: All right. We'll go through one more  
16 cycle. First Mr. Weintraub, then Mr. Steinberg, then  
17 Ms. Rubin.

18 MR. WEINTRAUB: Thank you, Your Honor. I will be  
19 brief.

20 First point is that contrary to what was said during  
21 argument, I did not admit and my clients have not admitted that  
22 anything in the bellwether pleadings were pled beyond the sale  
23 order. Our position is that the sale order does not bar the  
24 punitive damages claims. And what we argue -- or restate what  
25 we said before, there are three paths there -- to get there,





1 and we think that all three paths are pled in the bellwether  
2 complaints.

3 With respect to whether the plaintiffs should now  
4 amend the bellwether complaints in advance of getting marked  
5 pleadings from New GM, I don't think that makes any sense, Your  
6 Honor. We believe --

7 THE COURT: You say you don't think that makes any  
8 sense?

9 MR. WEINTRAUB: Yes. That we should amend before we  
10 get marked pleadings. Without the benefit of this Court's  
11 ruling, we'd be amending in the dark, and probably end up  
12 perhaps having to amend yet a second or third time. I think  
13 that the pleadings, to the extent we need marked pleadings on  
14 them, which is something I addressed earlier and said I didn't  
15 think we did, because once we know which of the three paths, or  
16 all three paths, or two of the three paths is what is the  
17 appropriate path for these lawsuit, then I think the pleadings  
18 can be dealt with. Or proof at trial could be circumscribed  
19 based upon what the plaintiff is permitted to prove.

20 Second point, Your Honor, and I won't belabor this  
21 because believe it or not I know when to shut up, and I'm going  
22 to try to adhere to that this morning. With respect to the GUC  
23 Trust and the reservation of rights that I filed, it was not  
24 filed for all non-ISD personal injury claimants. It was filed  
25 for a very limited group represented by Mr. Hilliard. That is





1 now a moot point. It was not a GUC Trust asset pleading. It  
2 was a reservation of rights.

3 My understanding is Mr. Hilliard is not going forward  
4 with representation of non-ISD pre-sale plaintiffs, so that the  
5 reservation of rights, whatever it meant, and it still means  
6 because I'm not going to un-reserve my rights, it was a  
7 statement, rights are reserved, whatever that means, it may be  
8 a moot point.

9 THE COURT: Did you say may be a moot point  
10 because --

11 MR. WEINTRAUB: Because I --

12 THE COURT: -- I've got a lot of work to do here. If  
13 there's something that's moot, I'm not going to reach out to  
14 decide something I don't need to decide.

15 MR. WEINTRAUB: I believe it's moot. And  
16 Mr. Hilliard is on the phone, and if it's not moot he'll  
17 correct me, but I have spoken with him about this, and subject  
18 to him telling me I misinterpreted what he told me, I believe  
19 it's a moot point.

20 With respect --

21 MR. HILLIARD: Your Honor, good morning. This is Bob  
22 Hilliard and I can speak to that issue briefly.

23 THE COURT: Do you want to interrupt Mr. Weintraub  
24 for it or do you want to wait until he's done?

25 MR. WEINTRAUB: I would give Mr. Hilliard permission,





1 whenever he wants to interrupt me.

2 THE COURT: All right. Mr. Hilliard, why don't you  
3 button it up now, please.

4 MR. HILLIARD: Thank you, Judge. I'll be brief.

5 Mr. Weintraub is correct in that the bellwether  
6 complaints will only address and be tried based on the personal  
7 injury and deaths and not on the economic loss.

8 MR. WEINTRAUB: I was speaking about something --

9 THE COURT: I thought you were --

10 MR. WEINTRAUB: -- different than that.

11 THE COURT: -- speaking about different -- yes.

12 MR. WEINTRAUB: Yeah.

13 THE COURT: All right. I thought you were talking  
14 about --

15 MR. WEINTRAUB: I'm talking about the ability to  
16 assert proofs of claim for pre-sale accident victims.

17 THE COURT: Yeah, so --

18 MR. WEINTRAUB: For non-ISD plaintiffs.

19 THE COURT: For non-ignition switch guys, and this is  
20 on proofs of claim for non-ignition switch people, which if I'm  
21 not mistaken increases the ante, if you will, for Ms. Rubin and  
22 Mr. Golden from 22 million cars' worth to 70 million cars'  
23 worth. That might get my attention if I were one of them.

24 MR. WEINTRAUB: And just to be clear, Your Honor,  
25 what we filed was only for the people listed on the exhibit to





1 our reservation of rights. And Mr. Hilliard, my understanding  
2 is he is no longer pursuing for those people on that exhibit  
3 the ability to file a late proof of claim for the pre-sale  
4 non-ISD plaintiffs on that list.

5 THE COURT: Okay. Now stand by, Mr. Weintraub.

6 Mr. Hilliard, did he properly understand your intent  
7 and position or is there a breakdown in communication? I'm not  
8 of a mind to estop anybody. I just want to know what's on the  
9 table.

10 MR. HILLIARD: He is right, Your Honor.

11 THE COURT: Okay. Now go ahead, Mr. Weintraub.

12 MR. WEINTRAUB: So it's a moot point, so I won't  
13 refute several of the misstatements that were made. And I'll  
14 stop and shut up, take my own advice.

15 Your Honor, with respect to briefing on the  
16 punitives, I thought we were talking about simultaneous  
17 briefing -- that's what Your Honor said earlier -- and then I  
18 thought it may have morphed into opening brief and reply brief.  
19 I would prefer simultaneous briefing.

20 Also, just as a point of clarification, if we are  
21 doing the briefing in this court on the bellwether complaints,  
22 I would assume that supersedes the 17 business day requirement  
23 of responding to Mr. Steinberg's letter that was sent pursuant  
24 to the terms of the judgment.

25 THE COURT: Are you talking about on punitives or





1 something different?

2 MR. WEINTRAUB: Punitives.

3 THE COURT: I understand -- I had understood that it  
4 would be a briefing schedule that I would set today, which  
5 would inevitably trump 17 days. Is that what you're saying?

6 MR. WEINTRAUB: That's what I'm asking for  
7 clarification on, Your Honor. Yes.

8 THE COURT: All right. I'll clarify it by the time  
9 we're done. I think I have a tentative on that, but I'll let  
10 Mr. Steinberg and Ms. Rubin be heard, too, although I don't  
11 think she has a dog in the fight on punitives.

12 MR. WEINTRAUB: And I'll stop there, Your Honor.

13 THE COURT: Okay.

14 MR. WEINTRAUB: Thank you.

15 THE COURT: Mr. Weintraub -- forgive me,  
16 Mr. Steinberg. At this point I really know who each of you  
17 guys are.

18 MR. STEINBERG: Your Honor, I'd like to address  
19 Mr. Weintraub's comments first, and then I'll go to  
20 Mr. Weisfelner. And I'll try to be brief.

21 On Footnote 4 on Page 3 of Mr. Weintraub's letter to  
22 the Court, he writes:

23 "It is our understanding that only two of the  
24 bellwether actions, the Norville and the Cochran  
25 actions, seek economic loss damages. We had been





1 informed that counsel for the plaintiffs in these two  
2 bellwether actions will not pursue claims against New  
3 GM for economic loss damages and are willing to amend  
4 their complaints to limit the damage sought to  
5 compensatory and punitive damages stemming from the  
6 post-363 sale incidents at issue."

7 So in his own letter to Your Honor he said he was  
8 going to amend the complaints because they had gone beyond what  
9 they were supposed to do. Our suggestion was --

10 THE COURT: I -- pause, please, because I think we've  
11 got a double entendre here which is causing the confusion.  
12 You're saying that you understand Mr. Weintraub to be intending  
13 to drop economic loss claims and to go strictly with the PI  
14 type claim array. And I think what Mr. Weintraub was saying  
15 troubled him was asking him to amend, not vis-à-vis, that  
16 aspect, but rather reliance on pre-sale old GM activity. I'm  
17 not sure if you and he disagree or not.

18 MR. WEISFELNER: Well --

19 THE COURT: I think I'd actually like you to pause  
20 for a second, whisper to Mr. Weintraub whether the distinction  
21 I'm making is the distinction, because if it's what I think  
22 you're saying, you could agree in eight seconds and his needs  
23 and concerns could be addressed and so could yours.

24 MR. STEINBERG: Right. Just to -- let me just say  
25 what my position is and then ask Mr. Weintraub if they will





1 confirm it. My position was you amend whatever you think  
2 you're supposed to amend. I will then submit a marked pleading  
3 if I think you hadn't gone further. But I'm not asking you to  
4 do anything more than what you presently indicated you were  
5 prepared to do in your letter to the Court.

6 MR. WEINTRAUB: Your Honor, I think the way you  
7 described it was exactly what I intended. If we need to have  
8 it deemed dropped, that's fine, economic damages. If we need  
9 to physically amend the complaint, I think that's a waste of  
10 time, Your Honor, and I'd prefer not to do that.

11 THE COURT: Either physically amend or give me a  
12 statement now, if you're authorized to do it, that says your  
13 client's complaint would be deemed amended to drop economic  
14 loss, but to have reserved your existing allegations vis-à-vis  
15 punitives.

16 MR. WEINTRAUB: That's correct, Your Honor. I adopt  
17 what you just said.

18 THE COURT: Is that enough to skin the cat,  
19 Mr. Steinberg?

20 MR. STEINBERG: Almost. All I ask, Your Honor, is  
21 not for him to go through formal amendments but to tell me the  
22 paragraph numbers of the complaints that he is formally  
23 withdrawing so that I know they're not something I have to deal  
24 with.

25 THE COURT: Can you guys prepare a stip or consent





1 order to do that so we don't have to do it on the fly with all  
2 these people in the courtroom?

3 MR. WEINTRAUB: We're talking about six complaints,  
4 five of which are at least 120 pages each. I think it would be  
5 a waste of time, Your Honor. What I've said stands. None of  
6 those plaintiffs are pursuing economic damages and the claim  
7 for relief should be deemed withdrawn. I don't want to put  
8 everyone through --

9 THE COURT: All right. Mr. Steinberg, Mr. Weintraub  
10 is as honorable as you are. Both of you guys have long track  
11 records in this court. Isn't that -- can I rely on that?

12 MR. STEINBERG: No. No, Your Honor, because I don't  
13 know what he's talking about. I -- it's not --

14 THE COURT: I can tell the difference between an  
15 economic loss claim and a PI claim pretty easily.

16 MR. STEINBERG: Well, in the -- in those cases is it  
17 -- does -- is it the cause of action on the Consumer Protection  
18 Statute? Is that what you're dropping? I just need -- it's  
19 not that hard for him to say Paragraphs 12 through 32. I'm not  
20 even asking to the -- anything with the underlying facts. All  
21 I want to know is when he gets to the cause of action one, two,  
22 three, and four, which ones are the ones that are -- remain.  
23 That's all I'm asking for him to say. That's easy to do.

24 MR. WEINTRAUB: We can look at the causes of action  
25 as opposed to the underlying factual allegations and point out





1 which ones are deemed withdrawn.

2 MR. STEINBERG: That would be acceptable to us.

3 MR. WEINTRAUB: I would just add, Your Honor, that we  
4 don't believe that we went beyond whatever restrictions there  
5 are --

6 THE COURT: I'm not looking to assign blame. What I  
7 am looking for is to make this issue go away. One way or  
8 another I want you guys to make this issue go away. You've got  
9 too many substantive things to be arguing about, when you're on  
10 the one yard line, to be arguing about this. It's not a good  
11 use of anybody's time.

12 MR. WEINTRAUB: I agree, Your Honor. We will do what  
13 I just said we would do.

14 MR. STEINBERG: All right. The second thing is, Your  
15 Honor, that in our letter to Your Honor we had indicated that  
16 we believed that the briefing schedule you set on the punitive  
17 damage issue, and broader than that, all the other issues, to  
18 the extent that we have an outstanding demand letter which  
19 includes the six bellwether complaints, that the 17 business  
20 days would be overridden by the briefing schedule that Your  
21 Honor set.

22 THE COURT: Right.

23 MR. STEINBERG: So we had made that suggestion in our  
24 letter to you.

25 THE COURT: Okay.





1 MR. STEINBERG: So I think that's all I'm going to  
2 say about what Mr. Weintraub had remarked.

3 I will say that with regard to Mr. Weisfelner's  
4 remarks that vis-à-vis the GUC Trust asset pleading, we should  
5 know before the end of the day are they withdrawing their GUC  
6 Trust asset pleading or not. Are they asking Your Honor to  
7 decide it based on the papers, or has he now made the  
8 concession that Your Honor's ruling applies to the non-ignition  
9 switch plaintiffs as well as the ignition switch plaintiffs  
10 with regard to the equitable mootness cause of action? That's  
11 pretty simple to decide, whether I've withdrawn it or I  
12 haven't. He's come close to the finish line, but he hasn't --

13 THE COURT: Well, are we talking about a reservation  
14 of rights or something different?

15 MR. STEINBERG: People could reserve whatever rights  
16 they want, but at the end of the day there's something --

17 THE COURT: Well, Ms. Rubin made the point that there  
18 was no GUC Trust asset pleading, or at least I understood that  
19 to be her point, aside from the reservation of rights.

20 MS. RUBIN: No. Can I clarify, Your Honor, please?

21 THE COURT: Yeah, but come to a mike so it gets  
22 picked up in the recording transcript.

23 MS. RUBIN: I think I can clarify this pretty easily,  
24 if I could. Mr. Steinberg?

25 There are two pleadings and I'm sure that





1 Mr. Steinberg and Mr. Davidson would agree with this.  
2 Mr. Weisfelner, on behalf of his clients, he represents non-  
3 ignition switch plaintiffs with economic loss claims, they  
4 filed an omnibus brief at the end of which had a section called  
5 GUC Trust asset pleading. Separately, Mr. Weintraub filed a  
6 reservation of rights on behalf of, as he has clarified,  
7 certain non-ignition switch pre-sale accident plaintiffs. It's  
8 Mr. Weintraub who is now saying he is willing to either  
9 withdraw or concede that it's moot.

10 Separately, I believe that what Mr. Steinberg is  
11 saying is that Mr. Weisfelner has said we are probably correct  
12 that the reasoning in Your Honor's April 1st decision, and the  
13 judgment itself as entered by Your Honor on June 1st, that we  
14 are probably correct that that reasoning should apply equally  
15 to non-ignition switch plaintiffs of both varieties, but  
16 probably he is saying that in connection with the economic loss  
17 plaintiffs.

18 So there are two pleadings that we consider GUC Trust  
19 asset pleadings. I understand Mr. Weintraub to say one of them  
20 is moot. What Mr. Steinberg is asking is will Mr. Weisfelner  
21 tell us once and for all whether he's willing to say the  
22 rationale should apply equally and Your Honor can rule on that  
23 and we can move on.

24 THE COURT: All right. Now I'm with you.

25 All right. Back to you, Mr. Stein --





1 MR. STEINBERG: I think he -- I think Ms. Rubin said  
2 Mr. Weintraub when she meant Mr. Weisfelner there,  
3 Mr. Weintraub's reservation of rights. I agree with the  
4 argument that -- I think we made the argument was non-  
5 responsive to having to file an affirmative pleading.

6 But all I'm trying to say, Your Honor, on this  
7 particular point is that there's something called the GUC Trust  
8 asset pleading. All sides in their letters to Your Honor have  
9 said you could rule on the papers and there's no need for oral  
10 argument. But based on what transpired today, it may be that  
11 there's nothing to rule on because they've withdrawn the  
12 request. Somewhere before the end of the day they should tell  
13 you whether they've withdrawn the request, what it is that  
14 they've withdrawn, and so that Your Honor will know what's left  
15 to rule upon. That's all I'm trying to say on that point.

16 THE COURT: Okay.

17 MR. STEINBERG: The other comments that I wanted to  
18 address was Mr. Weisfelner trying to argue what a trial lawyer  
19 might do in front of a jury and what Judge Furman may have  
20 intended to say notwithstanding what the transcript says what  
21 he intends to say.

22 So, Your Honor, we gave you the transcript. I don't  
23 want to burden the record necessarily by reading it. On Page 8  
24 out of 57, the judge, Judge Furman, gives three things that he  
25 would like to have resolved, and those three things are





1 punitive damages, imputation, and the effect of Your Honor's  
2 rulings on the pleadings that were filed in connection with the  
3 bellwether.

4           So those are the things that I had said that we  
5 should try to address in the next 30 days, work out a schedule,  
6 get it to Your Honor to be able to do it. I don't have to do  
7 more than that about whether -- what Judge Furman thought he --  
8 what Mr. Weisfelner hoped he had said about imputation or not.  
9 We'll brief it. Your Honor will then decide what you want to  
10 do based on that, and that will give Judge Furman everything he  
11 needs on the bellwether.

12           Everything else after which, which deals with the  
13 economic loss plaintiffs and the appropriate schedule and the  
14 level of the briefing, I obviously have a response. I will be  
15 somewhat if I try to do it now repetitive of what I had said  
16 earlier. I don't want to burden Your Honor since  
17 Mr. Weisfelner has picked up on my suggestion that we should  
18 try to do it on a consensual basis and give you some -- give  
19 Your Honor something that we have.

20           So I'm prepared to rest on all of it, but not because  
21 I'm reticent to engage in a toe-to-toe argument and to -- and  
22 refute each of the points, only because I think when both sides  
23 agree we can try to work it out to make it more presentable to  
24 Your Honor, that's where we should put the period and move on.

25           THE COURT: Okay. Ms. Rubin, do you have other stuff





1 beyond what you already said?

2 MS. RUBIN: Just very briefly, Your Honor.

3 THE COURT: Okay.

4 MS. RUBIN: I'll try to make this the briefest  
5 wagging of the tail ever. Your Honor, I just want to clarify  
6 we are going to go forward on September 22nd. And that's a  
7 hearing, as Your Honor knows, on whether Mr. Weisfelner's  
8 clients are entitled to a stay of future distributions from the  
9 GUC Trust.

10 THE COURT: I understand that to be separate and  
11 apart from the remainder of the issues.

12 MS. RUBIN: I -- and that was going to be my point,  
13 Your Honor. It has nothing to do with the GUC Trust asset  
14 pleading. It has nothing to do with the accordion feature.  
15 It's a day on which Mr. Weisfelner's clients are going to have  
16 to show their entitlement to a stay by meeting criteria,  
17 including the likelihood of success on the merits of their  
18 appeal.

19 THE COURT: I assume you guys are both going to be  
20 making your usual objection to their arguments. Maybe I'm  
21 showing my age, the usual standards for a preliminary  
22 injunction in the Second Circuit.

23 MS. RUBIN: Yes, Your Honor. And in addition to  
24 that, we're going to have to talk about whether or not  
25 Mr. Weisfelner's clients should post a bond, as our argument is





1 that they should.

2 Now, the only reason I raise this, Your Honor, is to  
3 say to the extent that there's any connection at all between  
4 some of the issues I've been discussing today and that hearing,  
5 it was to say Mr. Weisfelner is seeking a stay of distributions  
6 on behalf of a number of groups of people, the ignition switch  
7 plaintiffs but also the non-ignition switch plaintiffs that he  
8 represents with economic loss claims. And my only point was to  
9 say those folks aren't really before Your Honor. They haven't  
10 filed a claim. There is not decision affecting them until Your  
11 Honor rules on the GUC Trust asset pleading.

12 I was only meaning to suggest the bulk of the people  
13 that are driving this motion for a stay of distributions, the  
14 millions and millions of them that Your Honor was referring to,  
15 those are non-ignition switch plaintiffs. And so the time has  
16 come to resolve whether or not the equitable mootness holding  
17 should even apply to them before they ask Your Honor -- put the  
18 cart before the horse and ask Your Honor to stay my client's  
19 distributions and ones that affect the GUC Trust beneficiaries.

20 THE COURT: Well, you're giving a preview of your  
21 September 22nd arguments?

22 MS. RUBIN: I'm not sure that I am, Your Honor. My  
23 September 22nd arguments I think are much more geared toward  
24 the merits and why I think Mr. Weisfelner is going to lose on  
25 his appeal.





1 THE COURT: Again, but then what are you arguing now?

2 MS. RUBIN: I'm only meaning to say that the two are  
3 not connected other than those on which he has moved -- those  
4 on whose behalf on which he has moved. Those are people who  
5 are affected by this GUC Trust asset pleading. It's time to  
6 resolve whether they are even affected by the judgment that  
7 they are claiming they want a stay in support of.

8 THE COURT: All right.

9 MS. RUBIN: Thank you, Your Honor.

10 THE COURT: Okay. Sir, I'm sorry, I don't know you.

11 MR. PELLER: Gary Peller, Your Honor.

12 THE COURT: Oh, Mr. Peller. Yes, I do know you.

13 MR. PELLER: Gary Peller for the Bledsoe, Sesay and  
14 Elliott plaintiffs. Your Honor, my plaintiffs include a post-  
15 sale personal injury plaintiff as far as ignition switch and  
16 non-ignition switch economic loss plaintiffs. They are -- none  
17 of them are plaintiffs in the bellwether trials and so there's  
18 no triage necessary for briefing on any of their issues. But  
19 they would like an opportunity, since they're not represented  
20 by designated counsel, to submit papers and to respond to any  
21 marked-up pleadings that GM might submit with respect to their  
22 complaints. They're not named in the second amended MDL  
23 complaint. Their complaints are separate.

24 THE COURT: You can submit any papers you want.  
25 Vis-à-vis the timing of the papers, they're going to have to be





1 timed vis-à-vis the issue of -- that is then before me. If you  
2 don't have a dog in the fight on punitives, then you can be  
3 heard in the timetable dealing with the other stuff. If you  
4 have a dog in the fight on punitives, and I sense that you  
5 might, then you'll meet the deadlines with the -- imposed upon  
6 whoever has the most comparable interest, which I assume is  
7 going to be Mr. Weisfelner and Mr. Weintraub.

8 MR. PELLER: Yes. And we're happy to join in --

9 THE COURT: Okay.

10 MR. PELLER: -- whatever deadlines are agreed to.

11 THE COURT: Okay.

12 MR. PELLER: Thank you, Your Honor.

13 THE COURT: All right. All right. Has everybody had  
14 a chance to speak their peace? All right.

15 MR. CARNIE: Your Honor, this is Kevin Carnie, I  
16 represent the Bavlsik plaintiffs.

17 THE COURT: Okay. That's the name I had trouble  
18 pronouncing. Is it Bavlsik?

19 MR. CARNIE: Yes, Your Honor.

20 THE COURT: Yeah, go ahead.

21 MR. CARNIE: I just had one procedural issue that I  
22 think that you have addressed. I just wanted to make sure you  
23 had the notice of presentment that's been filed. It was filed  
24 last Friday. I assume that in addition to the outstanding  
25 demand letters that New GM has sent out, that your scheduling





1 order for the briefing on the punitives will also take  
2 precedent over that notice of presentment.

3 THE COURT: Okay. Now, under the notice of  
4 presentment, you would have been required to respond on what  
5 date?

6 MR. CARNIE: Well, Your Honor, that would require us  
7 to respond this Friday. And as a preliminary matter, I would  
8 let you know that the initial letter was served on us on  
9 August 21st. We did not -- we were not given 17 business days  
10 to respond. That would have brought it to September 15th.  
11 Instead on Friday this notice of presentment was filed.

12 THE COURT: Well, there was a letter that was  
13 attached to one of the documents that I saw that I gather you  
14 wrote where you kind of telegraph to me the potential for  
15 wanting to object to Mr. Steinberg's notice of presentment.

16 MR. CARNIE: Yes. We will, of course, be objecting  
17 to the notice of presentment.

18 THE COURT: All right. I want you first and then  
19 Mr. Steinberg to tell me your views as to whether you would  
20 want -- it would be appropriate for your response on the  
21 punitives to either supplement or be submitted at the same time  
22 as Mr. Weintraub, Mr. Weisfelner, on their punitives and  
23 whether that's agreeable to you, Mr. Steinberg.

24 MR. STEINBERG: Do you want him to go first?

25 THE COURT: Well, first, I'm sorry, I didn't get your





1 name other than the fact that I know you represent Bavlsik.

2 MR. CARNIE: Oh, I'm sorry, Your Honor. My name is  
3 Kevin Carnie.

4 THE COURT: Carney, C-A-R-N-E-Y?

5 MR. CARNIE: N-I-E.

6 THE COURT: N-I-E. Okay, Mr. Carnie. Is what you're  
7 looking for the opportunity to put in your punitives response  
8 at the same time as the other two guys?

9 MR. CARNIE: Yes. I was just making sure, Your  
10 Honor, that everyone was in agreement that we would not be  
11 responding by this Friday on the punitive damages issue.

12 THE COURT: Uh-huh, okay. Mr. Steinberg?

13 MR. STEINBERG: Your Honor, I would say yes with a  
14 caveat, which is that we have always suggested that Mr. Carnie,  
15 if he wants to respond, would respond as the same time as  
16 everyone else and Your Honor will tackle this at the same time.  
17 There is a hearing in the Missouri court next -- this coming  
18 Friday. Mr. Carnie will have to give his position as to  
19 whether he will oppose an adjournment of a trial to allow Your  
20 Honor to rule on that or not.

21 If he's going to oppose the adjournment to allow Your  
22 Honor to rule, that is fine. He can file his substantive  
23 response to the punitives with everybody else, but we will be  
24 filing pleadings before Your Honor to stay the trial on the  
25 merits to allow Your Honor to reach the rule -- the merits.





1           So my answer is the merits briefing should happen at  
2 the same time, but I'm here telegraphing that if there's not  
3 going to be an understanding to allow Your Honor's ruling to  
4 apply to the Bavlsik case, we may be able -- we may be coming  
5 to Your Honor to address the issue.

6           THE COURT: Mr. Carnie, giving you the extra time and  
7 the ability to run along with the other guys makes a lot of  
8 sense, but Mr. Steinberg makes a pretty good point to me. Are  
9 you going to oppose him on the adjournment?

10           MR. CARNIE: Yes, Your Honor. We have what we  
11 believe is a significant waiver issue in our case. This issue  
12 of punitive damages, this issue of the sale agreement, the sale  
13 order was not raised as an affirmative defense in our case. It  
14 was not mentioned until August 21st, and we believe that's a  
15 significant waiver issue, and on that basis we are opposing the  
16 motion to continue the trial.

17           THE COURT: Mr. Carnie, until and unless I give you  
18 the relief from the punitives, you're in contempt of my earlier  
19 orders. Are you going to be -- you know, everybody else who's  
20 been arguing before me has been up front on this and nobody's  
21 trying to get cute. If you insist on going forward without me  
22 deciding the threshold issue of punitives, you're going to be,  
23 A, in potential risk of getting TRO'd by me on the commencement  
24 of that trial, and B, at potential risk of contempt.

25           Now, everybody else has gone by the rules. And





1 forgive me, I'm getting a little angrier than I was earlier on,  
2 although hopefully I'm not screaming, but your trying to have  
3 it both ways really bugs me. And do you really want to go that  
4 route?

5 MR. CARNIE: Your Honor, if I may respond?

6 THE COURT: Of course.

7 MR. CARNIE: Okay. Number one, I do not believe that  
8 we are violating your earlier ruling. We were not given 17  
9 days to respond and file a no dismissal pleading. The notice  
10 of presentment was filed way too soon and the procedures used  
11 were not the procedures that Your Honor outlined in the  
12 judgment.

13 THE COURT: All right. Here is my ruling on that.  
14 You have the later of the time of the 17 days provided under  
15 the order and the time that's been agreed upon by other  
16 counsel. And if you're going to go this way, we better set the  
17 hearing on the TRO right now.

18 And then you can have the hearing on contempt,  
19 Mr. Steinberg, either on the same day or thereafter.

20 And, Mr. Carnie, I would sincerely invite you to  
21 consider whether you want to go along this route. When people  
22 work cooperatively I'm willing to listen to them for hours, as  
23 I've been willing to do now today for I guess what's close to  
24 four hours, in fact without a bathroom break for any of the  
25 poor people in the courtroom. But when you decide to play this





1 kind of hard ball, it's not the way we litigate in this court.  
2 Think about that between now and the time of the TRO and/or  
3 contempt hearings.

4 MR. CARNIE: Your Honor, I would apologize. It is  
5 not my intention at all to play hard ball. This is something  
6 that we've been brought in at the last minute in our trial.  
7 It's coming up in just a few days here. We have been working  
8 diligently to try to understand what is going on in the  
9 Bankruptcy Court and what your rulings mean, and we are not  
10 trying to disrupt anything. We are not trying to play hard  
11 ball. We certainly -- we'd never do anything that violates  
12 your order and we do not believe that we have done so. If we  
13 have, we will correct that and will apologize.

14 We were under the impression that we had 17 business  
15 days to respond to the letter from General Motors, and I think  
16 that is where the problem lies.

17 THE COURT: All right. Mr. Carnie, I would invite  
18 you, not now but maybe after we're adjourned today, to call one  
19 of the very skilled bankruptcy litigators who are representing  
20 people who have interests similar to yours. And I'm not  
21 telling you what to do, but I'm telling you that I will hear an  
22 application on a TRO if this thing isn't satisfactorily  
23 resolved. I'm not going to prejudice all of the other parties  
24 in this case who have very serious needs and concerns to meet  
25 your particular agenda time-wise.





1 MR. CARNIE: Yes, Your Honor, we understand. The one  
2 issue I wish clarification on is whether as the gatekeeper your  
3 function is to decide the waiver of this or not or whether that  
4 is something that belongs in the federal district court here.

5 THE COURT: The waiver argument can be made, but only  
6 if you're otherwise allowed to proceed.

7 MR. CARNIE: I'm sorry, Your Honor, I --

8 THE COURT: And I'm not going to decide an issue of  
9 that character in a status conference today. All right.

10 MR. STEINBERG: Your Honor?

11 THE COURT: Yes, Mr. Steinberg.

12 MR. STEINBERG: Just on that point. When Your Honor  
13 said "if you're allowed to proceed," I assume you meant proceed  
14 by Your Honor, not by another Court?

15 THE COURT: You bet your bippy.

16 MR. STEINBERG: All right. Thank you.

17 THE COURT: All right. We're going to take a ten  
18 minute recess. You all can go to the men's and ladies' rooms.  
19 And then I'll come back to you with some thoughts.

20 (Recess taken at 12:36 p.m.)

21 (Proceedings resume at 12:55 p.m.)

22 THE COURT: All right. Ladies and gentleman, here's  
23 what we're going to do. We are going to be triaging the  
24 matters as we all discussed, with particular focus on what  
25 needs to be done on the bellwether trials.





1 And on the punitives issue, which I regard as most  
2 important and most urgent, we're going to have simultaneous  
3 opening briefs and simultaneous replies, but we're not going to  
4 do it seriatim. Openings for both sides are going to be due no  
5 later than Sunday, September 13 at noon.

6 I note for those of you who don't have calendars that  
7 a holiday begins that night, which is why I'm setting it for  
8 noon that day. The courtesy copies that are normally delivered  
9 to chambers may be delivered the next day by non-religious  
10 messengers. Replies by each side will be due on noon, Tuesday,  
11 September 22nd, for the same reason. And once again delivery  
12 to chambers can be done the next day.

13 Vis-à-vis anything anybody still wants to say about  
14 imputation, we're going to do a slight variant of that. I want  
15 simultaneous openings and simultaneous replies, the replies to  
16 be coming in on September 30. I want you to meet and confer on  
17 a stip or consent order for a mutually agreed upon date for the  
18 openings.

19 On marked pleadings, on the bellwether cases that are  
20 going to need to be tried first, I think if I heard you right,  
21 Mr. Steinberg, I said you could have -- I think you said you  
22 could have your marked pleadings completed by September 21st.  
23 Did I hear you right?

24 MR. STEINBERG: That's correct.

25 THE COURT: Okay. With the marked pleading, you can





1 give me, if you choose to, a three-page, single-spaced letter  
2 filed on ECF explaining your reasons for your positions on your  
3 marked pleadings. The plaintiffs' side can give me a three-  
4 page, single-spaced commentary one week thereafter.

5 I want, however, only one responsive commentary,  
6 unless there's some showing of cause why one is insufficient.  
7 I don't want to get 18 of them. I don't want to get two of  
8 them, unless there's something that reflects a material  
9 difference in position.

10 The second amended consolidated complaint, though, I  
11 don't understand to be a bellwether issue and to both justify  
12 and require a slightly longer time. I want you to meet and  
13 confer on the mechanism for the marked pleading on the second  
14 amended consolidated complaint, but I don't want it to trail  
15 the marked pleadings by much later. I'm thinking roughly a  
16 week. And on that the commentary by New GM can be five pages,  
17 single spaced. And the response, which I assume will come from  
18 Mr. Weisfelner, can likewise be five pages, single spaced. In  
19 each case, single spaced.

20 On GUC Trust, upon review of my earlier opinion, I  
21 think Ms. Rubin did accurately say what I -- what she said I  
22 said on Page 9 of the formal judgment opinion, that it is time  
23 to come to fully -- to come to closure. It does appear that  
24 the matter is fully submitted, and she also convinced me that  
25 there was no need to -- or that it would be inappropriate to





1 delay on it. However, I still don't know if this is an issue  
2 or not. So I'd like to know by the end of the day what, if  
3 anything, is still going to have to be done on GUC Trust.  
4 Maybe I can take this one off my plate.

5 Now, and not by the way of -- oh, lastly, Mr. Carnie,  
6 your time frame will be as I described it before. You can take  
7 the later of 17 days or the time that your allies are going to  
8 be submitting their punitive damages things in. But I am not  
9 ordering you, but I am strongly encouraging you, to talk to  
10 those with like interests on punitives. And let first  
11 Mr. Steinberg and then my chambers know -- well, let all the  
12 other parties because they're impacted, too, by your strategy,  
13 and then my chambers as to whether I need to reserve time for a  
14 TRO hearing on that.

15 All right. Not by way of reargument, is there  
16 anything I failed to address? Mr. Steinberg?

17 MR. STEINBERG: Yes, Your Honor. On the briefing for  
18 the size of the number of pages of briefing, you haven't  
19 addressed that with regard to the punitive or the imputation.  
20 And I know that our letter had suggested a 20-page limit on the  
21 punitive, but -- and then I think 10 pages on the reply. But  
22 Your Honor may want to set different limits, but I'd just note  
23 that that's a hole in the schedule which either Your Honor will  
24 want to fill or not.

25 THE COURT: Yeah. No, that is a hole. I didn't





1 address that.

2 Mr. Weintraub, you may be the point guy on this;  
3 otherwise, Mr. Weisfelner, both of you. Does 20 and 10 work  
4 for you guys?

5 MR. WEINTRAUB: I'd prefer 25 to open, Your Honor.  
6 I'd be fine with 10 for the reply.

7 THE COURT: All right. You can have 25. Anything  
8 else?

9 MR. WEISFELNER: Your Honor --

10 MR. STEINBERG: Same thing for imputation, Your  
11 Honor?

12 THE COURT: Actually, imputation seems simpler than  
13 punitives. I'd like to stick with 20 and 10 on that.

14 MR. STEINBERG: That's fine.

15 THE COURT: Mr. Weisfelner?

16 MR. WEISFELNER: Your Honor, while I don't represent  
17 them, I didn't want there to be a hole in the schedule of the  
18 states. I presume that there could be a meet and confer with  
19 regard to the states. They're not on the same time frame as  
20 the bellwether trials, but perhaps the parties can meet and  
21 confer as to how long New GM should take on a commentary and  
22 how many pages of commentary and response the Court needs.

23 THE COURT: Yes, but I want it all done by  
24 September 30.

25 MR. WEISFELNER: Yes, sir.





1 THE COURT: Mr. Weintraub?

2 MR. WEINTRAUB: Just two housekeeping things, Your  
3 Honor. You didn't indicate -- or I might have missed it -- a  
4 time for the marked pleading letters on the 21st and the 28th  
5 of September.

6 THE COURT: Marked pleadings on the bellwethers or  
7 something --

8 MR. WEINTRAUB: Yes, on the bellwether. There are  
9 three-page letters that you're looking for on the 22nd.

10 THE COURT: I'm sorry. I thought I said one week  
11 thereafter.

12 MR. WEINTRAUB: No, no --

13 MR. STEINBERG: No, he's asking whether it's --

14 MR. WEINTRAUB: -- no, what time --

15 MR. STEINBERG: -- 5:00 p.m. or a different time or  
16 before midnight. That's what he's asking.

17 THE COURT: If it doesn't run up on the night before  
18 a holiday, you can have until the close of business. For that  
19 matter, you can have midnight if that's your idea of how you  
20 like to spend your evenings.

21 MR. WEINTRAUB: It's not, Your Honor. Just one other  
22 thing on the bellwethers and the three-page letter that the  
23 plaintiffs would be doing. I'm the attorney representing the  
24 plaintiffs in all six of those cases. And you mentioned  
25 something about just one letter and sharing letters. I'm not





1 sure who I might be sharing letters with on the bellwethers if  
2 it's just me.

3 THE COURT: Well, if you're the only guy then I think  
4 the issue drops out.

5 MR. WEINTRAUB: I think so.

6 THE COURT: Am I correct in my assumption that,  
7 especially if you're the guy, your position is going to be  
8 pretty uniform across all of your clients?

9 MR. WEINTRAUB: I think so, Your Honor. Yes.

10 THE COURT: Okay.

11 MR. STEINBERG: Your Honor, while I don't disagree  
12 with what Mr. Weintraub said, there are other state court  
13 plaintiffs that are not in the MDL and therefore are not  
14 bellwethers which have these types of issues. I do think that  
15 that will be a stare decisis collateral estoppel type issue  
16 unless we pull them into the process.

17 THE COURT: Well, I've got mixed feelings about that,  
18 Mr. Steinberg, because on the one hand I don't want to go  
19 through this over and over again. I don't want me or my  
20 successor to have to go through this over and over again. But  
21 on the other hand, the notion of getting all these people from  
22 all over the country popping in and making the same arguments,  
23 albeit perhaps not as well as Mr. Weintraub's going to do it,  
24 bothers me.

25 So what's your thought? To do it like we did the GUC





1 Trust thing, which is to have this go forward as a prototype  
2 with other people having the ability to show why it should be  
3 something beyond stare decisis, or I guess it's the other way  
4 around. It's going to be stare decisis, but giving the chance  
5 to be heard before it's res judicata?

6 MR. WEINTRAUB: Your Honor, I think -- if I could  
7 just be heard. What I'm talking about --

8 THE COURT: If you're going to be heard for more than  
9 one or two, take Mr. Steinberg's place at the main mike here.

10 MR. WEINTRAUB: What I was referring to specifically  
11 were the letters in response to the marked pleadings. I'm the  
12 only attorney with respect to those marked pleadings. There  
13 may be other people throughout the country that have a similar  
14 issue, but those people are not involved with those specific  
15 complaints. And so we'd be responding to what is marked in  
16 specific pleadings.

17 THE COURT: I take your point. Now, the concepts are  
18 going to be the same, Mr. Weintraub.

19 MR. WEINTRAUB: That's in --

20 THE COURT: But the devil will be in the details, I  
21 gather.

22 MR. WEINTRAUB: But I think the concepts will be  
23 addressed in briefing. And I thought the Court said that  
24 anyone who wants to be heard on the briefing can file their own  
25 brief.





1 THE COURT: And I told that to Mr. Peller, and it  
2 would apply to the other guys, too. Just see if you can talk  
3 to them to see if they can minimize the duplication.

4 MR. WEINTRAUB: I will, Your Honor.

5 THE COURT: But I cannot and will not deny anybody  
6 the right to file a brief.

7 MR. WEINTRAUB: No, I understand, Your Honor. I just  
8 don't want to be constrained in a three-page letter if I'm  
9 sharing it with 87 people.

10 THE COURT: Oh, you're concerned about security of  
11 circulating your draft or something?

12 MR. WEINTRAUB: No, constrained in terms of space.  
13 If I'm sharing three pages --

14 THE COURT: I don't expect you to make 87 guys -- I  
15 assume you're mainly going to be talking concepts with some  
16 discussion of how it applies to your six guys.

17 MR. WEINTRAUB: That's right, Your Honor, but I'd be  
18 -- I presume I'd be responding specifically to what was marked  
19 in the six specific pleadings.

20 THE COURT: You don't have a duty to anybody other  
21 than your own constituency.

22 MR. WEINTRAUB: That's right, Your Honor.

23 THE COURT: I understand that. Okay.

24 Mr. Steinberg?

25 MR. STEINBERG: Your Honor, I think that perhaps the





1 most efficient way is to deal with it as we dealt with it in  
2 the GUC Trust asset pleading. I would ask that we try to  
3 capture that in a proposed order which would be the scheduling  
4 order because I -- these people have gotten demand letters. So  
5 I'd like to be able to write them a note saying that you don't  
6 have to respond in 17 business days, these issues are teed up  
7 in the context of the bellwether cases and will be presented  
8 there.

9           This is the briefing schedule and if you believe that  
10 you're entitled to or would like to, you know, file a brief,  
11 you should indicate so to the Court or something to that so  
12 then Your Honor could then decide, but --

13           THE COURT: What you said sounds sensible, and I'm  
14 not sure if the people in the room would disagree with you.  
15 What about due process for the people who aren't in the room in  
16 terms of me endorsing your idea?

17           MR. STEINBERG: I think, Your Honor, I will settle  
18 the order on those people. The goal is to draft an order today  
19 which would be acceptable to the people in the room. And I  
20 guess, Your Honor, we can then ask Your Honor to sign it, and  
21 if anybody has an issue with regard to that, we can give them a  
22 short window to object to it as it pertains to them. And then  
23 Your Honor could see how many of them emerge from that process,  
24 but they will have then had the due process to have a further  
25 argument because they were not in the room right now.





1 THE COURT: Anybody in this room object to that idea?  
2 Okay. That seems to make sense. Did I not give you enough  
3 time to respond?

4 MR. WEINTRAUB: I'm sorry, Your Honor. I didn't hear  
5 the question. I was asking --

6 THE COURT: Mr. Steinberg was talking about working  
7 out something consensual with the people in this room and then  
8 settling it on the much larger universe. And then giving them  
9 also a couple of days to file something in case they don't like  
10 what the procedures order says.

11 MR. WEINTRAUB: I think that's fine, Your Honor. I  
12 thought we did work out that anyone who wanted to file their  
13 own brief could. And with respect to the marked pleadings and  
14 the bellwethers, I don't have to share three pages with anybody  
15 else.

16 THE COURT: I think I did say that, but I didn't see  
17 those as inconsistent.

18 MR. WEINTRAUB: No, I don't --

19 THE COURT: Don't be diplomatic. If you think I am  
20 inconsistent, tell me that.

21 MR. WEINTRAUB: No. I said I thought we agreed to  
22 that. I'm not sure what else I'm supposed to agree with --

23 MR. STEINBERG: Well, let me see --

24 THE COURT: Well, I think the main problem is  
25 Mr. Steinberg thinks that if he puts in -- or I'm guessing you





1 think that if you put in something else, then maybe three other  
2 people don't have to file them even though they have the right  
3 to do that.

4 MR. STEINBERG: Right. I think they need to know --  
5 they need to have a deadline upon which they indicate to Your  
6 Honor that they'd want to participate in their own pleading and  
7 to deal with it. And we'll see what those notices are and how  
8 many them are -- there are. And then we could have a -- maybe  
9 a telephonic conference so that Your Honor could regulate the  
10 flow of papers and still conform with your process. The whole  
11 goal is to include those who aren't in the room, to give them a  
12 chance to agree to what the people in the room have agreed to  
13 vis-à-vis the bellwether complaints.

14 THE COURT: I think we left it that you were going to  
15 put your form of order past the other guys anyway.

16 MR. STEINBERG: That's correct.

17 THE COURT: See if you can work out these details on  
18 a consensual basis, at least amongst you guys.

19 MR. STEINBERG: Thank you.

20 MR. WEINTRAUB: That's fine, Your Honor.

21 MR. WEISFELNER: Your Honor, I apologize. I thought  
22 I was unconfused until I just heard the last dialogue between  
23 the parties. Your Honor's request with regard to the punitive  
24 damage issue for briefs and replies, I thought I understood and  
25 I thought that they were inclusive of our issues, even though





1 we're not bellwether, and now I'm a little bit confused. I  
2 thought Your Honor wanted to triage and deal with bellwether  
3 first. Do you really need to hear from us on the punitive  
4 damage issue? And for that matter, do you need to hear from  
5 everyone who's not a bellwether participant on the issue of  
6 punitive damages at the same time?

7 THE COURT: Well, I don't want to decide the issue a  
8 second -- have to decide the issue a second time. If you have  
9 something different to say than Mr. Weintraub, I think you  
10 should pile on when he does his.

11 MR. WEISFELNER: Okay.

12 THE COURT: And I'm not sure if the concepts are  
13 going to be different or not, but I definitely don't want to  
14 decide punitives a second time.

15 MR. WEISFELNER: Yes.

16 THE COURT: Okay.

17 MR. WEISFELNER: The only -- that's fine. I  
18 understand.

19 THE COURT: Okay. Anything else? Okay. We're  
20 adjourned. Thank you.

21 MR. WEISFELNER: Thank you.

22 (Proceedings concluded at 1:13 p.m.)

23 \* \* \* \* \*

24





C E R T I F I C A T I O N

I, Lisa Luciano, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
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LISA LUCIANO, AAERT NO. 327      DATE: September 1, 2015  
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I, Ilene Watson, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter, and to the best of my ability.



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